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Conley Rose, P.C.
David A. Rose
P.O. Box 3267
Houston, TX 77253-3267

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OFFICE OF PETITIONS

In re Application of	:	
Bernd Schulte-Ladbeck	:	
Application No. 10/435,913	:	DECISION ON PETITION
Filed: May 12, 2003	:	TO WITHDRAW
Attorney Docket No. 2468-00300	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 23, 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 Timothy S. Westby 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 have been withdrawn.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.

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: **Vincent Remy**
Cabinet Lhermet La Bigne & Renny
11, Boulevard de Sebastopol
Paris 75001
France

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/435,913	05/12/2003	Bernd Schulte-Ladbeck	2468-00300

CONFIRMATION NO. 2057

POWER OF ATTORNEY NOTICE

23505
CONLEY ROSE, P.C.
David A. Rose
P. O. BOX 3267
HOUSTON, TX 77253-3267

OC000000028506924

Date Mailed: 02/27/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/23/2007.

- 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.

/tswilliams/

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

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OFFICE OF PETITIONS

In re Application of
Schulte-Ladbeck
Application No. 10/435,913
Filed:12 May, 2003
Attorney Docket No. (None)/137851

DECISION

This is a decision on the petition, filed on 23 July, 2008, considered as a petition under 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay.

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

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

BACKGROUND

The record reflects that:

Applicant, failed to reply timely and properly to the final Office action mailed on 15 November, 2007, with reply due absent an extension of time on or before 15 February, 2008.

On 7 February, 2008, prior Counsel submitted an amendment after final, which the Examiner refused to enter and prior Counsel–as one registered to practice before the Office—knows is not as of right and not a proper reply if it does not *prima facie* place the application in condition for allowance, and on 18 March, 2008, the Examiner mailed an Advisory Action.

The application went abandoned by operation of law after midnight 15 February, 2008.

It appears that the Office did not mail a Notice of Abandonment before the instant petition was filed.

On 23 July, 2008, Petitioner (new Counsel) filed a power of attorney (withdrawal of prior Counsel having previously been approved) and the instant petition with fee, a reply in the form of request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of the previously filed amendment, and made the statement of unintentional delay.

The power of attorney has been entered.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[1] In the event that such an inquiry has not been made, Petitioner **must** make such an inquiry.

If such inquiry results in the discovery that 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 C.F.R. §1.137(b) was unintentional, Petitioner **must** notify the Office.

The Office mailed the Notice of Abandonment on 25 July, 2008.

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.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

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[1] See 37 C.F.R. §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).

[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).

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.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[4]))

As to Allegations of Unintentional Delay

The requirements under 37 C.F.R. §1.137(b) have been satisfied.

CONCLUSION

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

The instant application is released to Technology Center/AU (TC/AU) 1795 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.

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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 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.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[5]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

---

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

§1.2 Business to be transacted in writing.

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

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Floyd A. Gonzalez
IBM Corporation – MS P386
2455 South Road
Poughkeepsie, NY 12601

MAILED
AUG 2 6 2005
Technology Center 2100

In re Application of:
Ronald M. SMITH, SR., et al.
Application No. 10/435,916
Filed: May 12, 2003
For: CIPHER MESSAGE ASSIST INSTRUCTIONS

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, filed August 17, 2005 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 statement that the applicant, Ronald M. Smith, Sr., 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 Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
571-272-3613

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5 COLUMBIA CIRCLE
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JUL 07 2005

OFFICE OF PETITIONS

In re Application of
Timothy J. Slegel, et al.
Application No. 10/435,919
Filed: May 12, 2003
Attorney Docket No. POU920030050US1

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 6, 2005 to withdraw the above-identified application from issue after payment of the issue fee.

It does not appear that the petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Lynn L. Augspurger appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party on whose behalf she acts. However, if Ms. Augspurger desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Ms. Augspurger, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

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 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

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

The application is being referred to Technology Center AU 2189 for further processing of the request for continued examination under 37 CFR 1.114 filed July 6, 2005.

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

cc: Lynn L. Augspurger
Intellectual Property Law
2455 South Road, P386
Poughkeepsie, NY 12601

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FEB 27 2006

OFFICE OF PETITIONS

In re Application of
Timothy Slegel, et al.
Application No. 10/435,919
Filed: May 12, 2003
Attorney Docket No. POU920030050US1

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 17, 2006 to withdraw the above-identified application from issue after payment of the issue fee.

It does not appear that the petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of John E. Campbell 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. However, if Mr. Campbell desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Campbell, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 3, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

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

The application is being referred to Technology Center AU 2189 for further processing of the request for continued examination under 37 CFR 1.114 filed February 17, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOHN E. CAMPBELL
INTELLECTUAL PROPERTY LAW
2455 SOUTH ROAD - MS P386
POUGHKEEPSIE, NY 12601

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FEB 27 2006

OFFICE OF PETITIONS

Date : February 24, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Timothy Slegel, et al.
Application No. : 10/435,919
Filed : May 12, 2003

The above-identified application has been assigned Patent No. 7,013,370 and an issue date of March 14, 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 March 14, 2006:

> "All reference to Patent No. 7,013,370 to TIMOTHY SLEGEL, ET AL. of NEW YORK for INVALIDATING STORAGE, CLEARING BUFFER ENTRIES, AND AN INSTRUCTION THEREFOR appearing in the Official Gazette of March 14, 2006, should be deleted since no patent was granted."

Sherry D. Brinkley

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: Paul Harrison, Crystal Park 3-44l (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-9l0 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane K.Davis, P/OCS, CM1-6A07
Tamara K. Greene, PK3-910

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OFFICE OF PETITIONS

In re Application of
Timothy J. Slegel, et al.
Application No. 10/435,919
Filed: May 12, 2003
Attorney Docket No. POU920030050US1

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 14, 2006 to withdraw the above-identified application from issue after payment of the issue fee.

It does not appear that the petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of John E. Campbell 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. However, if Mr. Campbell desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Campbell, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is dismissed as moot.

Petitioner requested that the application be withdrawn from issue to permit consideration of an information disclosure statement filed in a request for continued examination (RCE) on November 8, 2005. Since the RCE is filed within the period set for paying the issue fee, as required by the Notice of Allowance and Issue Fee Due mailed March 6, 2006, prosecution is reopened in the present application. Consequently, no petition under 37 CFR 1.313 is necessary.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2189 for further processing of the RCE under 37 CFR 1.114 filed April 14, 2006.

Sherry D. Brinkley

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOHN E. CAMPBELL
INTELLECTUALPROPERTY LAW
2455 SOUTH ROAD - MS P386
POUGHKEEPSIE, NY 12601

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OFFICE OF PETITIONS

In re Application of :
Timothy J. Slegel, et al. :
Application No. 10/435,919 :
Filed: May 12, 2003 :
Attorney Docket No. POU920030050US1 :

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c), filed June 27, 2006, requesting that the above-identified application be withdrawn from issue.

The petition is **DISMISSED AS MOOT**.

Petitioners request that the application be withdrawn from issue for consideration of a request for continued examination (RCE) in compliance with 37 CFR 1.114, filed on June 27, 2006. Since the RCE is filed within the period set for paying the issue fee, as required by the Notice of Allowance and Issue Fee Due mailed May 17, 2006, prosecution is reopened in the present application. Consequently, no petition under 37 CFR 1.313 is necessary.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2189 for further processing of the RCE under 37 CFR 1.114 filed June 27, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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IBM CORPORATION
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OFFICE OF PETITIONS

In re Application of :
Timothy J. Slegel, et al. :
Application No. 10/435,919 : ON PETITION
Filed: May 12, 2003 :
Attorney Docket No.: POU920030050US1 :

This is a decision on the petition, filed September 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 September 7, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2189 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
SLEGEL, et al.	:	
Application No. 10/435,919	:	DECISION GRANTING PETITION
Filed: May 12, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. POU920030050US1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 12, 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 29, 2006 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2189 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

---

[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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JUL 10 2007

OFFICE OF PETITIONS

In re Application of Timothy J. Siegel, et al. Application No. 10/435,919 Filed: May 12, 2003 Attorney Docket No. POU030050US1	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 July 5, 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]

Telephone inquiries regarding this decision should be directed to April Wise at (571) 272-1642.

This application is being referred to Technology Center AU 2189 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Frances M. Hicks
Petitions Examiner
Office of Petitions

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

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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

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OFFICE OF PETITIONS

In re Application of	:	
Hester, et al.	:	DECISION ON PETITION
Application No. 10/435,921	:	
Filed: May 12, 2003	:	
Docket No.: CML00549J	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 29, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Office action mailed February 8, 2006. The Notice 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. 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 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.

The request change of correspondence address has been entered into the record.

This application 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

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

MORRISS O'BRYANT COMPAGNI, P.C.
136 SOUTH MAIN STREET
SUITE 700
SALT LAKE CITY UT 84101

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NOV 03 2005

OFFICE OF PETITIONS

In re Application of :
Abbas Ben Afshari :
Application No. 10/435,924 : ON PETITION
Filed: May 12, 2003 :
Attorney Docket No.: 2017.SME.CN

This is a decision on the petition filed July 8, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed April 7, 2004. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested, this application became abandoned July 8, 2004. Accordingly, a Notice of Abandonment was mailed November 9, 2004.

This matter is being referred to Technology Center 2859 for appropriate action on the amendment filed July 8, 2005.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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

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

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

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

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UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 6

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

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DEC 15 2003

OFFICE OF PETITIONS

In re Application of :
James A. Proctor, Jr. and Dennis Ferguson :
Application No. 10/435,927 :
Filed: May 12, 2003 :
Attorney Docket No. 2479.1033-003 :
For: SUBSCRIBER-CONTROLLED REGISTRATION TECHNIQUE IN A CDMA SYSTEM :

DECISION ACCORDING STATUS UNDER 37 CFR 1.47

This is in response to the petition under 37 CFR 1.47(a) filed November 12, 2003.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers or cannot be located.

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

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

After this decision is mailed, the above-identified application will be 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
www.uspto.gov

Paper No. 7

James A. Proctor, Jr.
258 Sea View Street
Melbourne, FL 32951

COPY MAILED

DEC 15 2003

OFFICE OF PETITIONS

In re Application of :
James A. Proctor, Jr. and Dennis Ferguson :
Application No. 10/435,927 :
Filed: May 12, 2003 :
Attorney Docket No. 2479.1033-003 :
For: SUBSCRIBER-CONTROLLED :
REGISTRATION TECHNIQUE IN A :
CDMA SYSTEM :

Letter

Dear Mr. Proctor:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining 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: HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

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

RYAN KROMHOLZ & MANION, S.C.
POST OFFICE BOX 26618
MILWAUKEE, WI 53226

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OFFICE OF PETITIONS

In re Application of	:	
Jason Jossart	:	
Application No. 10/435,932	:	DECISION ON PETITION
Filed: May 12, 2003	:	TO WITHDRAW
Attorney Docket No. 9491.18325	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 6, 2005.

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

A review of the file record indicates that the previously appointed power of attorney has been revoked by the assignee. 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.

This application is being referred to Technology Center AU 1764 to await a reply to the final Office action mailed January 12, 2006.

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: JANSSON SHUPE MUNGER & ANTARAMIAN
245 MAIN STREET
RACINE, WI 53403

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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CALIPER LIFE SCIENCES, INC.
605 FAIRCHILD DRIVE
MOUNTAIN VIEW CA 94043-2234

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OFFICE OF PETITIONS

In re Application of	:	
Chien, Ring-Ling	:	
Application No. 10/435,937	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 100/16300	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 19, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1020.00 extension of time fee submitted with the petition on September 19, 2005, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

This matter is being referred to Technology Center 2800 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

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

STRIKER, STRIKER & STENBY
103 East Neck Road
Huntington, NY 11743

Mail Date: 04/21/2010

Applicant	: Susanne Birkel	: DECISION ON REQUEST FOR
Patent Number	: 7597898	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/435,953	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **364** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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CALFEE HALTER & GRISWOLD, LLP
800 SUPERIOR AVENUE
SUITE 1400
CLEVELAND OH 44114

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DEC 22 2003

OFFICE OF PETITIONS

In re Application of :
Brian Dale, et al. :
Application No. 10/435,954 : DECISION GRANTING PETITION
Filed: May 12, 2003 :
Attorney Docket No. 27708/04037 :

This is a decision on the petition under 37 CFR 1.10(d) filed October 14, 2003, requesting that the above-identified application be accorded a filing date of May 12, 2003, rather than the presently accorded filing date of May 13, 2003.

Applicants request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on May 12, 2003, prior to the last scheduled pickup for that day pursuant to the requirements of 37 CFR 1.10. However, the Express Mail label identified in the original application papers shows a "date-in" of May 17, 2003. Applicants are alleging that the date of mailing shown by the Express Mail receipt is a U.S. Postal Service (USPS) error and the correct date of mailing is May 12, 2003.

In support, the petition is accompanied by a copy of an Express Mail log maintained by the petitioner showing an entry made by B.W. indicating that a patent application identified by Client/Matter No. 27703/04037 and Express Mail label No. EL084748339US was deposited in an Express Mail drop box on May 12, 2003, at 4:30 p.m. and that the last scheduled pickup for the box on that date was 5:00 p.m. The petition is also accompanied by a copy the US Postal Service (USPS) Track & Confirm record showing that a package bearing Express Mail label No. EL084748339US was accepted "May 12, 2003, 4:39pm, Cleveland, OH 44114." The same Express Mail number appears on the original transmittal letter found in the file.

In view of the evidence, it is concluded that the "date-in" shown on the Express Mail label is incorrect and that the correct date of deposit in Express Mail service is May 12, 2003. PTO records will be corrected accordingly.

The petition is GRANTED.

Telephone inquires related to this decision should be directed to the undersigned at (703) 305-9220.

The application is being referred to Initial Patent Examination Division (OIPE) for correction of the filing date to **May 12, 2003** and issuance of a corrected filing receipt. Thereafter the application will be referred to the Technology Center AU 3737 for examination in due cours.

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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Lynn L. Augspurger
IBM Corporation – MS P386
2455 South Road
Poughkeepsie, NY 12601

MAIL

SEP 0 9 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Ronald M. SMITH, Sr., et al.
Application No. 10/435,982
Filed: May 12, 2003
For: MULTIFUNCTIONAL HEXADECIMAL INSTRUCTIONS

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, filed August 17, 2005 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 statement that the applicant, Ronald M. Smith, Jr., 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 Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Anthony Niewyk, Esq.
BAKER & DANIELS LLP
Suite 800
111 East Wayne Street
Fort Wayne, IN 46802

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FEB 15 2008

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Dean P. Stanley :
Application No. 10/435,986 :
Filed: May 12, 2003 :
Attorney Docket No. HER0107 :

This is a decision on the petition under 37 CFR 1.137(b), filed on February 26, 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 January 27, 2006. A Notice of Abandonment was mailed on June 27, 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.

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) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

There is no indication that petitioner has submitted a Part B - Fee(s) Transmittal form (PTOL-85). Accordingly, if petitioner desires to have the information normally found thereon printed on the patent, the attached blank Fee(s) Transmittal form should be completed and returned to the Publishing Division within **ONE MONTH** from the mail date of this decision.

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

Enclosure: Blank Part B – Fee(s) Transmittal Form (PTOL-85b)

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.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571) 273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.

TITLE OF INVENTION:

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE

EXAMINER	ART UNIT	CLASS-SUBCLASS

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1_____

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2_____ 3_____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

☐ Issue Fee

☐ Publication Fee (No small entity discount permitted)

☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

☐ A check in the amount of the fee(s) is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.
NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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

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OIPE IAP78
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PATENT & TRADEMARK OFFICE

Anthony Niewyk, Esq.
BAKER & DANIELS LLP
Suite 800
111 East Wayne Street
Fort Wayne, IN 46802

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FEB 15 2008

OFFICE OF PETITIONS

In re Application of	:	
Dean P. Stanley	:	
Application No. 10/435,986	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. HER0107	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on February 26, 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 January 27, 2006. A Notice of Abandonment was mailed on June 27, 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.

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) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

There is no indication that petitioner has submitted a Part B - Fee(s) Transmittal form (PTOL-85). Accordingly, if petitioner desires to have the information normally found thereon printed on the patent, the attached blank Fee(s) Transmittal form should be completed and returned to the Publishing Division within **ONE MONTH** from the mail date of this decision.

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

Enclosure: Blank Part B – Fee(s) Transmittal Form (PTOL-85b)

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United States Patent and Trademark Office
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JENKENS & GILCHRIST, P.C.
225 WEST WASHINGTON
SUITE 2600
CHICAGO IL 60606

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JUL 14 2005

OFFICE OF PETITIONS

In re Application of :
Dion K. Aoki et al. :
Application No. 10/436,002 : ON PETITION
Filed: May 12, 2003 :
Attorney Docket No: 47079-0186

This is a decision on the petition under 37 CFR 1.47(a) filed June 16, 2005, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.131 where it requires that an affidavit be executed by the named inventors.[1]

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

The above-identified application was filed on May 12, 2003. At the time of filing, applicant submitted a 37 CFR 1.63 declaration signed by all of the inventors. A non-final Office action was mailed on January 13, 2005. This office action set a shortened statutory period for reply of three months.

In response, on June 16, 2005, with a two month extension of time,applicant submitted a reply and a declaration under 37 CFR 1.131. The 37 CFR 1.131 declaration stated that all of the inventors were responsible for reduction to practice of the subject matter of the rejected claims prior to the date of the reference on which the January 13, 2005 rejection was based. However, the 37 CFR 1.131 declaration was signed by all joint inventors except joint inventor Cullen O'Day. Applicant has filed the instant petition to have the 37 CFR 1.131 declaration entered despite the fact that the declaration was not signed by joint inventor O'Day. According to applicant, Mr. O'Day could not be located.

37 CFR 1.131 states, in pertinent part:

> When any claim of an application or a patent under reexamination is rejected, the **inventor** of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.[2]

---

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply.

[2] 37 CFR 1.131(a) (emphasis added).

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."[3]

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, the instant application is not the subject of a patent under reexamination. Moreover, it has not been shown that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the only party eligible to sign the 37 CFR 1.131 declaration are all of the joint inventors including O'Day.

The petition bears proof that efforts to locate Mr. O'Day, such as internet searches and searches of the telephone directory, were used to locate him, but to no avail.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

The 37 CFR 1.131 declaration was required to be signed by all joint inventors but all except joint inventor O'Day have executed it. Applicant has demonstrated that a *bona fide* effort was made to locate O'Day. Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

The 37 CFR 1.131 declaration will be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied.

It should be noted however, that effective November 22, 2004, the fee for a petition to waive the rules has been increased to $400.00. Therein, deposit account no. 10-0447 has been charged in the amount of $400.00 pursuant to 37 CFR 1.17(f). See the Notice published in the Federal Register on September 21, 2004 and in the Official Gazette of the United States Patent and Trademark Office on October 12, 2004.

The application file is being forwarded to Technology Center 3713 for consideration of the reply and the 37 CFR 1.131 declaration, filed June 16, 2005.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[3] MPEP 715.04.

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225 WEST WASHINGTON
SUITE 2600
CHICAGO IL 60606

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DEC 0 1 2006
OFFICE OF PETITIONS

In re Patent of	:	
Aoki, et al.	:	
Patent No. 7,056,206	:	
Issue Date: June 6, 2006	:	Decision on Request
Application No. 10/436,002	:	
Filing Date: May 12, 2003	:	
Attorney Docket No. 47079-187	:	

This is a decision on the request filed under 37 CFR 3.81(b) to accept the correction of the assignee data after the patent has issued.

The request under 37 CFR 3.81(b) is **granted**.

37 CFR 3.81(b) currently states:

> 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.

In other words, the request under 37 CFR 3.81(b) will be granted when:

(1) a request under 37 CFR 3.81 and the fee set forth in 37 CFR 1.17(i) are filed,
(2) the assignment was submitted for recordation prior to issuance of the patent, and
(3) a request for a certificate of correction and the fee set forth in 37 CFR 1.20(a) are submitted.

Petitioners have met the requirements set forth above. Therefore, the request is granted.

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

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Kimberly A. Chasteen
PO Box 1243
Yorktown VA 23692

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SEP 11 2007

OFFICE OF PETITIONS

In re Application of
Gaylord et al.
Application No. 10/436,013
Filed: 05/12/2003
Attorney Docket No. 036878.0008b

DECISION ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 21, 2006, which set a shortened statutory period for reply of three (3) months. Petitioner obtained an extension of time for response within the second month. Accordingly, the application became abandoned on February 22, 2007. A Notice of Abandonment was mailed on March 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 continuing application under 37 CFR 1.53(b); (2) the petition fee; and (3) an adequate statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/728,765.

The statement of unintentional delay presented in the petition does not comply with the current rule. 37 CFR 1.137(b)(3) requires petitioner to submit 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." However, the statement presented will be accepted and construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is not a correct interpretation of the statement contained in the present petition.

Petitioner submitted a request for a three-month extension of time with the present petition. However, pursuant to 37 CFR 1.136, a request for an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, the $570.00 extension of time fee is unnecessary because it was submitted after the maximum period obtainable for reply. The Office will refund the $570.00 fee to petitioner's Deposit Account.

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

This application is being referred to Technology Center AU 1775 for appropriate action by the Examiner in the normal course of business on the reply received on March 27, 2007.

Christina T. 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
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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

Mail Date: 04/20/2010

Applicant	: Gregory R. Whittaker	: DECISION ON REQUEST FOR
Patent Number	: 7594917	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/436,038	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **403** 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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FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER
1300 I STREET N W
WASHINGTON DC 20005-3315

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FEB 22 2005

OFFICE OF PETITIONS

Applicant: Simonnet et al.
Appl. No.: 10/436,050
Filed: May 13, 2003
Title: PHOTOACTIVATABLE DIAZIRINE-ACTIVE AGENT COMPOUNDS, COMPOSITIONS COMPRISING THEM AND USES THEREOF
Attorney Docket No.: 5725.1203-00
Pub. No.: US 2004/0043046 A1
Pub. Date: March 4, 2004

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on May 4, 2004 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course, unless the patent is issued before the application publishes.

Inquires concerning this communication should be directed to Mark Polutta at (571) 272-7709.

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

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Paper No. 5

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OFFICE OF PETITIONS

MCDERMOTT, WILL & EMORY
600 13TH STREET, N.W.
WASHINGTON, D.C. 20005-3096

In re Application of	:	
Deeman, et al.	:	
Application No. 10/436,057	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 50103-474	:	

This is a decision on the papers styled, "Response To Notice Of Omitted Item(s) In a Nonprovisional Application," filed on August 15, 2003, which has been treated as a Petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of May 13, 2003, including Figures 4C, 4D, 5, 6 and 7, as described in the specification.

The application was filed on May 13, 2003. However, on July 23, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice Of Omitted Item(s)" (Notice) that stated the application had been accorded a filing date, but Figures 4C, 4D, 5, 6 and 7, as described in the specification appear to have been omitted.

In response, on August 15, 2003, the instant petition and a four (4) pages of drawings that include Figures 4C, 4D, 5, 6 and 7, as described in the specification, were submitted. The papers were accompanied by a copy of applicant's postcard receipt that acknowledges receipt of four (4) sheets of drawings on May 13, 2003. A review of the application file indicates the presence of zero (0) sheets of drawings. It is assumed that missing sheets of drawings were misplaced by the Office.

In view of the above, the petition is granted.

The $130.00 petition fee has not been charged.

This application will be returned to OIPE for further processing with a filing date of May 13, 2003, using the four (4) sheets of drawings, which include Figures 4C, 4D, 5, 6 and 7, as described in the specification, supplied on August 15, 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 6/13/06

TO SPE OF : ART UNIT 3653

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/436111 Patent No.: 7017752B2

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

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

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

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments:

The OATH specifically indicates that foreign priority is not claimed to the foreign Applications

SPE

3653
Art Unit

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February 1, 2007

Kenneth Q. Lao
WARE, FRESSOLA, VAN DER SLUYS & ADOLPHSON LLP
Bradford Green, Building Five
755Main Street, P.O. Box 224
Monroe, CT 06468

Patent No: 7,017,752 B2
Application No: 10/436,111
Applicant: Steven Tse
Issued: March 28, 2006
Title: **APPARATUS AND METHOD OF SEPARATING SMALL RUBBISH AND ORGANIC MATTERS FROM GARBAGE FOR COLLECTION**

Request for Certificate of Correction:

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

Inspection of the application for the above patent reveals that the omission of the priority data from the patent resulted from applicant's failure to fully comply with 35 U.S.C. 119, in that: the oath specifically indicates that foreign priority is not claimed to the foreign applications.

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

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

Virginia Tolbert
For Mary F. Diggs, Supervisor
Decisions and Certificate of Correction
(703) 308-8309 or (703) 308-9390 ext. 113

vt

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Paper No.

MACPHERSON KWOK CHEN & HEID LLP
1762 TECHNOLOGY DRIVE, SUITE 226
SAN JOSE CA 95110

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JUN 01 2004

OFFICE OF PETITIONS

In re Application of Paresh Nagda, Wenbin Li, Julia Howlett, Rodric Fan, Xinnong Yang and James Fay Application No. 10/436,114 Filed: May 9, 2003 Attorney Docket No. M-11703-1P US Title: USING LOCATION DATA TO DETERMINE TRAFFIC AND ROUTE INFORMATION	DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.47(a)," filed May 12, 2003.

The petition is **DISMISSED**.

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

The above-identified application was deposited on May 9, 2003, with a declaration executed by all of the joint inventors, except inventor Yang. Accompanying this declaration was the instant petition under § 1.47(a). Rule 47 applicants maintain that status under 37 CFR 1.47 is proper because joint inventor Yang cannot be found or reached after a diligent effort to join in the application.

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

The instant petition does not satisfy requirement (2). Petitioner has not set forth sufficient facts to conclude that

diligent efforts were undertaken to reach or locate inventor Yang. Petitioner does not set forth the basis for concluding that inventor Yang has returned to China. Petitioner does not show that they utilized resources such as the Internet to locate inventor Yang. If further attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through E-mail, directory assistance, or the Internet continue to fail, then applicant will have provided the necessary proof required under 37 CFR § 1.47 that the inventor cannot be reached. Details of the efforts to locate non-signing inventor Yang should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicants should also submit documentary evidence such as the results of an E-mail or Internet search.

As to the sufficiency of the evidence, it is noted that the application transmittal indicates that the instant petition is 11 pages long; however, the petition of record is only 3 pages long. Perhaps the additional 8 pages would satisfy the deficiency in this petition. Petitioner is welcome to call the undersigned to discuss the missing pages.

Further, to facilitate quick resolution of this matter, it is recommended that the undersigned be called upon submission of any renewed petition.

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

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

By FAX: (703) 872-9306
ATTN: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: CUSTOMER SERVICE WINDOW[1]
2011 South Clark Place
Crystal Plaza Two Lobby
Arlington, VA 22202

---

[1] Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop _____
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Adjustment date: 06/01/2004 CKHLOK
05/14/2003 JBALINAN 00000031 502257 09898682
01 FC:1460 130.00 CR

06/01/2004 CKHLOK 00000008 502257 10436114

01 FC:1460 130.00 DA

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FOLEY AND LARDNER, LLP
SUITE 500
3000 K STREET, NW
WASHINGTON, DC 20007

In re Application of	:
David Houze et al	:
Serial No.: 10/436,126	: PETITION DECISION
Filed: May 13, 2003	:
Attorney Docket No.: 041457-0687	:

This is in response to the petition under 37 CFR 1.144, filed March 9, 2007, 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 November 10, 2003, and contained claims 1-24. In a first Office action, mailed September 12, 2006, the examiner set forth a restriction requirement based on the claims as originally filed, as follows:

Group I – claims 1-14, 21 and 23, drawn to a bioadhesive composition; and
Group II – claims 15-20, 22 and 24, drawn to a source layer including a bioadhesive composition.

The examiner reasoned that Group II required two separate layers which is not required in Group I which does not specify any layers

Applicants replied on November 13, 2006, electing Group I with traverse. Applicants argued that the requirement is improper as search of both inventions would not impose a serious burden on the examiner because the limitations of Group I claims are also present in the Group II claims. Applicants also argued that the examiner's classification of the claims was incorrect.

On December 8, 2006, the examiner mailed an Office action to applicants acknowledging the election and traversal. The examiner argued that although the Groups are related as products which share a common utility, the utility is not linked to the substantial structural feature since Group II requires two layers. The requirement was maintained and made Final. Claims 1-14, 21 and 23 were then rejected under 35 U.S.C. 103(a) as unpatentable over Hymes et al in view of

Maloney et al; and over Potaczek in view of Hymes et al and Mahoney et al; and over Mantelle in view of Potaczek et al in view of Mahoney et al.

Applicants replied to the Office action on March 6, 2007, and filed this petition requesting withdrawal of the restriction requirement on March 9, 2007.

DISCUSSION

Applicants' claim 1 is directed to a bioadhesive composition comprising four main components, (a) a soluble polyvinylpyrridone polymer (PVP), (b) a bioadhesive, (c) an active agent, and (d) a backing layer occlusive to the active agent, and optionally a solvent. Claim 15 is directed to a composition for administration on the skin of one or more active agents comprising (a) an active agent, (b) an adhesive layer comprised of an admixture of (i) PVP, (ii) a bioadhesive, and optionally a solvent, and (c) a backing layer occlusive to the active agent.

As can be seen, each claim requires more than one layer, i.e. – an adhesive layer, a backing layer – and each claim contains the same components, PVP, adhesive, active agent and backing layer. Claim 1 does not prohibit each component being in a separate and distinct layer, but allows inclusion of more than one component in each layer. Claim 15 sets forth a specific order of layers, each representing a single component.

As argued by applicants, a search of the claims of Group I would of necessity cover the claims of Group II and no undue burden exists on the Office to do so. No significant additional limitations are presented to distinguish claim 15 over claim 1 except for a further definition of layer arrangement. Such does not provide a proper basis for restriction.

Applicants' arguments and the examiner's rebuttal arguments regarding classification are of little merit in determining whether restriction is proper or not in this situation.

DECISION

The petition is **GRANTED.**

The restriction requirement between Groups I and II is withdrawn.

The application will be forwarded to the examiner for consideration of applicants' reply filed March 6, 2006, and further action not inconsistent with this decision..

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

Bruce M. Kisliuk
Director, Technology Center 1600

SP

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AUG 17 2005

In re Application of ARAI ET AL.	:	
Appl. No.: 10/436,139	:	**WITHDRAWAL FROM**
Filed: May 13, 2003	:	**ISSUE**
For: BATTERY STATUS MONITORING APPARATUS	:	*37 CFR 1.313*
WHICH MONITORS INTERNAL BATTERY	:	
RESISTANCE, SATURATION POLARIZATION	:	
DETECTING METHOD AND DISCHARGEABLE	:	
CAPACITY DETECTING METHOD	:	

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

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

U.S. Patent and Trademark Office records reveal that the issue fee and the publication fee have not been paid. If the issue fee and the publication fee have been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Fees Due, applicant may request that the previously submitted issue fee and publication fee be applied toward payment of the issue fee and publication fee in the amount identified on the new Notice of Allowance and Issue and Publication Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

The application is being forwarded to the examiner for action.

Richard K. Seidel
Director
Patent Examining Technology Center 2800

ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP
1725 K STREET, NW
SUITE 1000
WASHINGTON, DC 20006

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CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

Mail Date: 04/21/2010

Applicant	: Show-Mean Wu	: DECISION ON REQUEST FOR
Patent Number	: 7632288	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/436,216	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **831** 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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DANIEL R ALEXANDER
MILLIKEN & COMPANY
920 MILLIKEN RD
PO BOX 1926
SPARTENBURG SC 29304

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of	:	
Brown, et al.	:	
Application No. 10/436,227	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 2182B	:	

This is a decision on the petition filed on August 3, 2003, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

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

The above-identified application became abandoned for failure to timely pay the issue fee as required by the Notice of Allowance, mailed April 30, 2004. This Notice set a statutory period of

three (3) months from the mailing date of the notice for fee transmittal. The three-month statutory period for paying issue fees cannot be extended. No issue fee having been received, the above-identified application became abandoned on July 31, 2004. The mailing of this decision precedes the mailing of a Notice of Abandonment.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (1), the required reply and item (2), the petition fee.

As to item (2), petitioner's Deposit Account did not contain sufficient funds to cover the petition fee.

As to item (1), although petitioner did file a Request for Continued Examination (RCE) and a submission in the form of an Information Disclosure Statements (IDS), **petitioner has failed to submit the issue fee** as required by the Notice of Allowance. Payment of the issue fee is required "as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee."[1] While petitioner could have replied to the Notice of Allowance with just an RCE **before the application became abandoned,** once the application is abandoned the issue fee must accompany the RCE.

On renewed petition, petitioner must submit the petition fee, RCE fee, and issue fee. If the above-identified application is again allowed, petitioner may request that this issue fee be applied towards the issue fee required by a new Notice of Allowance.[2]

---

[1] MPEP 711.03(c)(III)(A)(1).

[2] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply and 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).

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

By mail: Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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MILLIKEN & COMPANY
920 MILLIKEN RD
PO BOX 1926
SPARTENBURG SC 29304

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OFFICE OF PETITIONS

In re Application of	:	
Brown, et al.	:	
Application No. 10/436,227	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 2182B	:	

This is a decision on the renewed petition filed on November 16, 2004, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee as required by the Notice of Allowance, mailed April 30, 2004. This Notice set a statutory period of three (3) months from the mailing date of the notice for fee transmittal. The three-month statutory period for paying issue fees cannot be extended. No issue fee having been received, the above-identified application became abandoned on July 31, 2004. Applicants filed a petition to revive under 37 CFR 1.137(b) on August 3, 2004. However, this petition was dismissed in a decision mailed on September 16, 2004. The petition did not contain the petition fee in addition to the issue fee and RCE fee.

With the instant petition, petitioner submitted the petition fee and issue fee, and made the proper statement of unintentional delay. The RCE fee was previously submitted on August 3, 2004.

The petition fee of $1,370 and the issue fee of $1,370 have been charged to Deposit Account No. 04-0500, as authorized. If the above-identified application is again allowed, petitioner may request that this issue fee be applied towards the issue fee required by a new Notice of Allowance.[1]

The application file is being forwarded to Group Art Unit 1751 for consideration of the RCE and IDS filed August 3, 2004, as well as the Rule 312 amendment filed November 16, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)273-3207.

Cliff Congo
Petitions Attorney
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 and 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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Floyd A. Gonzalez
IBM Corporation – MS P386
2455 South Road
Poughkeepsie, NY 12601

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AUG 2 6 2005

Technology Center 2100

In re Application of:
Ronald M. SMITH, SR., et al.
Application No. 10/436,230
Filed: May 12, 2003
For: MESSAGE DIGEST INSTRUCTIONS

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, filed August 17, 2005 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 statement that the applicant, Ronald M. Smith, Sr., 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 Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

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FLOYD A. GONZALEZ
IBM CORPORATION – MS P386
2455 SOUTH ROAD
POUGHKEEPSIE, NY 12601

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OFFICE OF PETITIONS

In re Application of :
Shawn D. Lundvall et al :
Application No. 10/436,230 : ON PETITION
Filed: May 12, 2003 :
Attorney Docket No. POU920030108US1

This is a decision on the petition filed, September 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 September 7, 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 2132 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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OCT 19 2005

Joseph J. Buczynski
Roylance, Abrams, Berdo & Goodman, L.L.P.
Suite 600
1300 19th Street, N.W.
Washington DC 20036

In re Application of	:	
Gholam A. Peyman	:	DECISION PETITION
Serial No.: 10/436,234	:	
Filed: May 13, 2003	:	
For: Intraocular Lens for Correcting	:	
Presbyopia	:	

This is in response to applicants' petition filed July 18, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

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

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

Should there be any questions with regard to this letter please contact Frederick Schmidt by letter addressed to the Director, Technology Center 3700, P.O. Box 1450 Alexandria, VA 22313-1450, or by telephone at (571) 272-2975 or by facsimile transmission at (571) 273-8300.

Frederick R. Schmidt, Director
Technology Center 3700

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SUITE 700
WASHINGTON DC 20005

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JAN 0 3 2006

OFFICE OF PETITIONS

In re Application of	:	
Yasuhiro Tanaka et al	:	
Application No. 10/436,274	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 960/133	:	

This is a decision on the petition, filed December 30, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 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 3747 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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HAYNES AND BOONE, LLP
901 MAIN STREET, SUITE 3100
DALLAS TX 75202

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OFFICE OF PETITIONS

In re Application of	:	
Farcasiu, Alexandru M.	:	DECISION ON PETITION
Application No. 10/436,298	:	TO WITHDRAW
Filed: May 12, 2003	:	FROM RECORD
Attorney Docket No. 30215.71	:	

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. O'Dell on behalf of all attorneys of record who are associated with Customer Number 27683.

All attorneys/agents associated with Customer Number 27683 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 inventor; or (2) the assignee of the entire interest. All future communications from the Office will continue to be directed to the first named inventor or the assignee of the entire interest at the below-listed address until otherwise properly notified by the 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:

TX TECHNOLOGY ACQUISITION CORP.
4250 BURTON DRIVE
SANTA CLARA, CA 95054

MARK L. WATSON, ESQ.
BLAKELY SOKOLOFF TAYLOR & ZAFMAN, LLP
8055 EAST TUFTS AVENUE, SUITE 1300
DENVER, CO 80237

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SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY NY 11530

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JUN 25 2007

OFFICE OF PETITIONS

In re Application of
James Neill Johnson et al.
Application No. 10/436,302
Filed: May 12, 2003
Attorney Docket No. 15835(EM01985)

: DECISION GRANTING PETITION

This is a decision on the petition filed November 15, 2006 under 37 CFR 1.181 to withdraw the holding of abandonment.

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

The above-identified application became abandoned May 16, 2006, as a result of petitioner's failure to file a proper appeal brief within the time period provided in 37 CFR 1.192(a). A Notice of Abandonment was mailed June 6, 2006.

A Notice of Appeal was filed December 6, 2005. On February 9, 2006 (February 6, 2006 certificate of mail date) an appeal brief was filed. On April 13, 2006, a Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed. In response, a Supplemental Appeal Brief was filed May 17, 2006 (May 15, 2006 certificate of mail date). However, subsequent to the mailing of the Notice of Abandonment, a second Supplemental Appeal Brief was filed June 16, 2006 with a one month extension of time and a certificate of mail dated June 13, 2006.

Petitioner argues that in view of the extension of time, the Supplemental Appeal Brief and extension of time in response to the Notification of Non-Compliance with 37 CFR 1.192 (c) was timely.

A search of the application file and the USPTO records reveals that in fact, the Supplemental Appeal Brief and extension of time in response to the Notification of Non-Compliance with 37 CFR 1.192 (c) was filed June 16, 2006 bearing a certificate of mail date of June 13, 2006.

Accordingly, the response was timely and the Notice of Abandonment mailed June 6, 2006 was prematurely mailed in error and is hereby withdrawn. No petition fee is due and none has been charged.

This application is being forwarded to Technology Center 1771 for review of the Appeal Brief filed June 16, 2006.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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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.
10/436,302	05/12/2003	James Neil Johnson	15835(EM01985)	1784

23389 7590 12/13/2007
SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER
PIZIALI, ANDREW T

ART UNIT	PAPER NUMBER
1771	

MAIL DATE	DELIVERY MODE
12/13/2007	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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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12-13-07

wk

In re application of	:	
Johnson et al.	:	DECISION
Serial No. 10/436,302	:	DISMISSING
Filed: May 12, 2003	:	PETITION
For: Plasma Deposited Amorphous Silicon Nitride Interlayer Enabling Polymer Lamination To Germanium	:	

This is a decision on the SECOND PETITION UNDER 37 C.F.R. 1.181 TO REINSTATE A DISMISSED APPEAL AND RESCIND A HOLDING OF ABANDONMENT.

On February 9, 2006 applicants submitted an appeal brief. On April 13, 2006 the brief was held non-compliant for three reasons. Applicants submitted a new appeal brief on May 17, 2006. This new brief was found to be still defective for 2 of the 3 reasons set forth in the letter of April 13, 2006. A Notice of Abandonment was mailed out on June 6, 2006. However, subsequent to the mailing of the Notice of Abandonment, a second Supplemental Appeal Brief was filed June 16, 2006 with a one month extension of time and a certificate of mail dated June 13, 2006.

Applicants filed a petition on November 15, 2006 under 37 C.F.R. 1.181 to withdraw the holding of abandonment. The petition was granted. It was determined that the Supplemental Appeal Brief and extension of time in response to the Notification of Non-Compliance with 37 CFR 1.192(c) was filed June 16, 2006 bearing a certificate of mail date of June 13, 2006. The application was then forwarded to the Technology Center for review of the Appeal Brief filed June 16, 2006. This brief was also found non-compliant and a notice of non-compliance was mailed out July 3, 2007. However a subsequent communication from the Office on August 2, 2007 pointed out that the action mailed out July 3, 2007 was in error. It was determined that the Dismissal of Appeal was timely and proper according to 37 CFR 41.37(d).

Applicant asserts that it appears that the Technology Center has disregarded the determinations as set forth in the Petition Decision as it refused to regard the Appeal as reinstated and determined that the application is abandoned.

As directed by the petition decision of June 25, 2006; the abandonment was withdrawn and the Appeal Brief filed of June 16, 2006 was reviewed. The Appeal was not reinstated by the petition decision. The petition states that "this ***is a decision on the petition filed November 15, 2006 under 37 CFR 1.181 to withdraw the holding of abandonment***". MPEP 1215.04 states that an appeal will be dismissed if an applicant fails to timely and fully reply to a notice of noncompliance with 37 CFR 41.37(d). See MPEP § 1205.03 and 37 CFR 41.37(d). (which

states ....*(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed)*

A review of the records shows that the brief of 2/9/2006 was held non-compliant for three reasons and that the resubmission on 5/17/2006 was still non-compliant for 2 of the 3 reasons and since that brief did not overcome the reasons for non-compliance as stated in the notification of 4/13/2006 the appeal stands dismissed. The Dismissal of Appeal was timely and proper according to 37 CFR 41.37(d). The additional action of the examiner on 7/3/2007 was improper since the appeal was already dismissed under the ruling section MPEP 1215.04. As governed by MPEP 1215.04 the application is abandoned as of the date of reply to the notice was due. The applicant may petition to revive the application as in other cases of abandonment and to reinstate the appeal.

DECISION

Accordingly, the petition for is **DISMISSED.**

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Richard J. Danyko
Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530

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td

Mailed: 2-9-06

In re application of	:	
Katsuji Ebisu et al.	:	DECISION ON
Serial No. 10/436,331	:	PETITION
Filed: May 13, 2003	:	

For: LIQUID CRYSTAL DISPLAY AND MANUFACTURING METHOD OF SAME

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed September 19, 2005.

On February 24, 2005, a non-final office action was mailed to applicant rejecting the claims under various grounds of rejection. A reply to the office action was filed by applicants on June 24, 2005. In the reply, applicants made several amendments to the claims and cancelled other claims. A final office action was mailed by the office on September 19, 2005 containing several new grounds of rejection.

On January 19, 2006 the instant petition under 37 CFR 1.181 was timely filed to formally request the withdrawal of finality of the September 19, 2005 office action.

Petitioner's position for the withdrawal of the finality is that the new grounds of rejection in the final office action were not necessitated by applicant's amendments to the claims.

DECISION

Section 706.07 of the MPEP states:

706.07(a) Final Rejection, When Proper on Second Action

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Petitioner argues that because claims 41-49 were not amended by applicants in the response filed June 24, 2005, the new grounds of rejection made over these claims were not necessitated by applicant's amendments. This argument is persuasive.

Accordingly, the petition for withdrawal of finality is **GRANTED.**

It is also pointed out that while the finality of the office action has been withdrawn, the rejection still stands. Applicant's time for response to the September 19, 2005 office action continues to run. Extensions of time may be obtained to file any amendments. Such amendments will be treated as an amendment under 37 CFR 1.111 or 1.112 and will be entered.

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

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

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HAHN LOESER & PARKS, LLP
ONE GOJO PLAZA
SUITE 300
AKRON OH 44311-1076

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OFFICE OF PETITIONS

In re Application of	:	
Blejde et al.	:	
Application No. 10/436,336	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 201141.00036	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 27, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 1700 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana C. Walsh
Liana Chase 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

HAHN LOESER & PARKS, LLP
ONE GOJO PLAZA
SUITE 300
AKRON OH 44311-1076

COPY MAILED

SEP 01 2009

OFFICE OF PETITIONS

In re Application :
Walter N. Blejde et al. :
Application No. 10/436,336 : DECISION ON APPLICATION
Filed: May 12, 2003 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **201141.00036** :

This is in response to the "APPLICATION FOR- PATENT TERM ADJUSTMENT 37 C.F.R. § 1.705(b)" filed November 18, 2008. Applicant requests that the determination of patent term adjustment be corrected from zero (0) to three hundred fifty two (352) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008). Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Christina Tartera Donnell for

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Examination Policy

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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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20061107a

DATE : November 7, 2006

TO SPE OF : ART UNIT

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

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - 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 inventorship has been changed

SPE: Cecilia Tsang **Art Unit** 1654

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DATE: October 19, 2006
TO: Certificates of Correction Branch
FROM: Cecilia Tsang
SPE, Art Unit 1654
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,872,701 as specified on the attached Certificate.

Cecilia Tsang

Cecilia Tsang, SPE
Art Unit 1654

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJR.: 08-07

Paper No:__

COPY MAILED

AUG 27 2007

OFFICE OF PETITIONS

FITZPATRICK CELLA
HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

In re Application of	:	
Matsuda, et al.	:	DECISION
Application No. 10/436,344	:	
Filing Date: 12 May, 2003	:	
Attorney Docket No.: 83366.0036	:	

This is a decision on the petition filed on 30 October, 2006, and considered as requests under 37 C.F.R. §1.181 for the withdrawal of the holding of abandonment.

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 petitions as considered under 37 C.F.R. §1.181 are **DISMISSED**; and Petitioner must clarify the record.

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

[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.**

include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

(2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

A review of the record indicates that:

- 2 June, 2005, the Office mailed a Notice Regarding Drawings containing a hand-dated (2 June, 2006) Draftsperson's Review (copy enclosed) requiring corrections to the drawings, with reply due under a non-extendable deadline on or before 2 August, 2006, and Petitioner failed to reply timely and properly to that Notice;

- the instant application went abandoned after midnight 2 August, 2006;

- the Office mailed the Notice of Abandonment on 7 September, 2006;

- on 30 October, 2006, Petitioner filed the instant petition, reciting a narrative of events, but appears to have done so without review of Private PAIR, which review would have revealed the Drawings requirement (discussed above) under a 5 June, 2006, event entry;

- what confuses this matter particularly is that papers appear consistently to have been mailed by the Office to Hogan & Hartson LLP, 500 S. Grand Ave./Ste. 1900, Los Angeles, CA 90071-2611, but replied to without Notice or objection throughout prosecution by Fitzpatrick Cella Harper & Scinto under a Customer Number–and then the further filing on 10 May, 2006, of a Revocation/Power of Attorney that in fact is dated almost 29 month earlier ("DEC. 19 2003")–but is to the Fitzpatrick Cella Harper & Scinto address, and not to the Hogan & Hartson address that Notice Regarding Drawings was mailed on 2 June, 2006.

To advance his petition under 37 C.F.R. §1.181, Petitioner must clarify this matter and these events.

Further, Petitioner refers to a paper dated 5 September, 2005, regarding drawings, but certainly ignores the later (2 June, 2006) drawings requirement.

Petitioner also refers to a conversation with the Examiner and complains that no action resulted from that conversation. As one registered to practice before the Office, Petitioner is aware that all practice before the Office is in writing (see: 37 C.F.R. §1.2).

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

---

[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 of a holding of abandonment.[9]

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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.

[9] 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. 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.

* **

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.)
>
> * * *

The commentary at MPEP §711.03(c) also provides:

> * * *
>
> **B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed**
>
> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), * (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.
>
> Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.
>
> <u>Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon</u> 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.

Thus, as of this writing Petitioner appears not to have satisfied and not to be able to satisfy the showing requirement described above–and, thus, not satisfied his burden herein.

CONCLUSION

Because it appears that Petitioner has not carried his burden in the instant matter, the instant petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Petitioner's only alternative to irretrievable abandonment may well be a petition alleging unintentional delay under 37 C.F.R. §1.137(b).

Petitioner may wish to file such 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:[10]

By mail: Commissioner for Patents[11]
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

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[12]) 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: 2 June, 2006, Notice Regarding Drawings

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[10] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. Faxes sent to the old number no longer are routed to the new number. The number (571) 273-8300 is the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf.)

[11] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

[12] 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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NUMBER	2035FILING DATE	FIRST NAME APPLICANT	ATTORNEY DOCKET NUMBER
10/436344	05/12/2003	MATSUDA, YOJIRO	83366.0036

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

Examiner: PHAM, TAMMY

Art Unit: 2629

Sheet No.

Date Mailed: June 2, 2006

Notice Regarding Drawings

Corrected drawings for the above-identified application, received in the USPTO on **05/12/2003** still not acceptable for the reason(s) identified on the attached PTO-948. Applicant is given one opportunity to correct the informalities within a two-month time period from the mailing date of this Notice. **THIS TIME PERIOD IS NOT EXTENDABLE UNDER EITHER 37 CFR 1.136(a) OR 1.136(b). Failure to take corrective action within the set period will result in abandonment of the application.**

ATTACHMENT: PTO-948 Notice of Draftsperson's Patent Review

RETURN CORRECTED DRAWINGS TO:
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Form PTO-948 (Rev. 06/03)
Application No. 10/436344

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 5/12/03 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) 1-12

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, at the Brief Description of the Drawings, must likewise be changed.

✓ Views not labeled separately or properly w/ fig labels Fig(s) 2,4,6-9,11

7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3)

✓ Sectional designation should be noted with Arabic or Roman numbers. Fig(s) 8A, 9A

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) 1-12

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)___

___ Figure legends are poor. Fig(s)___

___ 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) 1-12

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:
Fig datas missing dig (Fig 1-5, 8B, 9B-12)
Fig labels missing dig. (Fig 2 - Fig 12)

Reviewer WJS

Date 6/2/06

If you have questions, call (703) 305-8404.

Attachment to Paper No. ___

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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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MAR 2 4 2008

FITZPATRICK CELLA
HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

In re Application of	:	
Matsuda, et al.	:	DECISION
Application No. 10/436,344	:	
Filing Date: 12 May, 2003	:	
Attorney Docket No.: 83366.0036	:	

This is a decision on the petition filed on 15 November, 2007, and considered as requests under 37 C.F.R. §1.181 for the withdrawal of the holding of abandonment.

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]

NOTE: Petitioner's attention is directed to the information set forth in the CONCLUSION, below.

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

BACKGROUND

A review of the record indicates that:

- on 2 June, 2005, the Office mailed a Notice Regarding Drawings containing a hand-dated

[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.

(2 June, 2006) Draftsperson's Review (copy enclosed) requiring corrections to the drawings, with reply due under a non-extendable deadline on or before 2 August, 2006, and Petitioner failed to reply timely and properly to that Notice;

- the instant application went abandoned after midnight 2 August, 2006;
- the Office mailed the Notice of Abandonment on 7 September, 2006;
- on 30 October, 2006, Petitioner filed the original petition, reciting a narrative of events, but appears to have done so without review of Private PAIR, which review would have revealed the Drawings requirement (discussed above) under a 5 June, 2006, event entry;
- confusing this matter at that time was that papers appear consistently to have been mailed by the Office to Hogan & Hartson LLP, 500 S. Grand Ave./Ste. 1900, Los Angeles, CA 90071-2611, <u>but replied to without Notice or objection throughout prosecution</u> by Fitzpatrick Cella Harper & Scinto under a Customer Number–and then the further filing on 10 May, 2006, of a Revocation/Power of Attorney that in fact is dated almost 29 month earlier ("DEC. 19 2003")–but to the Fitzpatrick Cella Harper & Scinto address, and not to the Hogan & Hartson address that Notice Regarding Drawings was mailed on 2 June, 2006, and –due to the lack of clarity in the record, the petition was dismissed on 27 August, 2007;
- the instant petition seeks to overcome the prior deficiencies: while Petitioner asserts that:

  –the correspondence address set forth on papers filed contained the Fitzpatrick cella Harper & Scinto address, Petitioner is well aware that simple addressing does not constitute Notice to the Office, and Petitioner cannot rely upon such an argument;

  –similarly, Petitioner contends that because the 7 September, 2005, Office action accepted the drawings as submitted as fo that date, the intervening amendment(s) entered and the subsequent Notice of Allowance/Allowability would not engender requirements for amendments to drawings and not suggest prudent review of the image file wrapper to ascertain possible required changes, as were mailed in the Notice of 5 June, 2006, and Petitioner prudently would not rely on such an argument; and

  –it was happenstance that the courier delivery of the Office action from Hogan & Hartson to a Fitzpatrick Cella Harper & Scinto attorney and the materials were not given to/received by the Fitzpatrick Cella Harper & Scinto docketing office, and Petitioner

cannot and prudently would not rely upon such an argument;

the 8 June, 2006, mailing of an acknowledgment of Petitioner's 10 May , 2006, Revocation/Power of Attorney certainly would have signaled l that the Office had not entered that data until the 8 June mailing, and that Petitioner might prudently review the record to ensure that Petitioner had replied timely and properly to all matters outstanding.

Nonetheless, Petitioner has made sufficient showing, consistent with the guidance in the Commentary at The commentary at MPEP §711.03(c)(I)(A) and (B), and the record now has clarity that the Office did receive Notice of the Revocation/Power of Attorney in advance of the 5 June, 2006, Notice as to the Drawings Requirement, and that latter Notice was not mailed to what was to be the new address of record.

Petitioner, it is noted, has submitted (pursuant to the 5 June, 2006, Notice) drawings with the instant petition.

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 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

[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).

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 of a holding of abandonment.[9] (See: MPEP §711.03(c)(I)(A) and (B).)

---

[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.

[9] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

And the regulation requires that relief be sought within two (2) months of the act complained of.

Petitioner appears to have satisfied his burden herein.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181 is **granted**, and the 7 September, 2006, Notice of Abandonment is **vacated**.

The instant file is released to Publications Branch to be processed into a patent 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 Publications Branch in response to this decision—and it is noted that all inquiries with regard to any failure of that change in status should be directed to Publications Branch where that change of status must be effected.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[10]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

---

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

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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS CO 80527-2400

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DEC 0 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Clough, et al.	:	
Application No.: 10/436,347	:	DECISION
Filing Date: 12 May, 2003	:	
Attorney Docket No. 200210003-1	:	

This is a decision on the petition filed on 1 October, 2008, and properly considered as a petition requesting withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

The petition to withdraw the holding of abandonment under 37 C.F.R. §1.181 is **GRANTED**.

As to the Request to Withdraw
the Holding of Abandonment

Petitioners are directed to the Commentary at MPEP §711.03(c) 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 that:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 11 January, 2008, with reply due absent extension of time on or before 11 April, 2008.

The application went abandoned after midnight 11 April, 2008.

The Office mailed a Notice of Abandonment on 5 September, 2008.

On 1 October, 2008, Petitioner filed the instant petition seeking withdrawal of the holding of abandonment under the provisions of 37 C.F.R. §1.181, and averred timely reply, and supported that averment with a copy of the Office Auto-Reply Facsimile Transmission of 11 April,2008, 2:05:08 p.m. EDT, acknowledging receipt by the Office of 10 pages, including the cover sheet, which cover sheet matches the copy supplied by Petitioner, who further provided a copy of the

balance of the reply in the form of nine (9) pages of Response (amendment), Remarks and Conclusion.

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

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

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). 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.[2],[3]

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

Allegations as to the Request to Withdraw the Holding of Abandonment

The record evidences a satisfactory showing of the requirements under the Rule.

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

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

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

CONCLUSION

The petition as considered under 37 C.F.R. §1.181 is **granted**, and the 5 September, 2008, Notice of Abandonment is **vacated**.

The instant application is released to the Technology Center/AU (TC/AU) 2453 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[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

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SEP 28 2009

OFFICE OF PETITIONS

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Application of	:	
Taravella et al.	:	
Application No. 10/436380	:	ON REQUEST FOR
Filing or 371(c) Date: 05/12/2003	:	RECONSIDERATION OF
Attorney Docket No.	:	PATENT TERM ADJUSTMENT
088734-0107	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705, filed July 23, 2009. Applicant submits that the correct patent term adjustment to be indicated on the patent is 1174 days, not 580 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The request is properly treated under 37 CFR 1.705(b).

Patentees also request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until after a final decision has been rendered in Wyeth v. Dudas. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance. Accordingly, the request to hold in abeyance a decision on the merits of the instant application for patent term adjustment is **DISMISSED**.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected

issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is

advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the required $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b). As the fee is a prerequisite prior to treatment on the merits of any request for reconsideration of patent term adjustment, the request for refund of the required fee is hereby **DISMISSED**.

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 Attorney Derek Woods at (571) 272-3232.

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

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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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APR 16 2010

OFFICE OF PETITIONS

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Application of	:	
Taravella et al.	:	
Patent Number: 7,611,727	:	DECISION ON REQUEST
Issue Date: 11/03/2009	:	FOR RECONSIDERATION OF
Application No. 10/436380	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 05/12/2003	:	and
Attorney Docket No.	:	NOTICE OF INTENT TO ISSUE
088734-0107	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 28, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred sixty (1160) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred sixty (1160) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on May 13, 2006 and ends on May 1, 2008, the day before the RCE was filed, and is 720 days (not 721) days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1159, not 1160 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand one hundred fifty-nine (1159) days**.

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

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

/Derek L. Woods/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,611,727 B2

DATED : **November 3, 2009**

INVENTOR(S) : Taravella 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 566 days.

Delete the phrase "by 566 days" and insert – by 1159 days--

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7 Commerce Drive
Danbury, CT 06810

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MAR 1 1 2005

OFFICE OF PETITIONS

In re Application of :
Karl Boggs, et al. :
Application No. 10/436,381 : ON PETITION
Filed: May 12, 2003 :
Attorney Docket No. ATMI-646 :
(2771-646 (7495))

This is a decision on the petition under 37 CFR 1.182, filed February 8, 2005, to change the order of the names of the inventors.

The petition is granted.

The order of the names of the inventors will be changed as follows:

1. Karl Boggs

2. Michael Darsillo

3. Peter Wrschka

A Corrected Filing Receipt reflecting the above change is attached herewith.

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.

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

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

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

Attachment: Corrected Filing Receipt

cc: Intellectual Property/Technology Law
P. O. Box 14329
Research Triangle Park, NC 27709

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PITNEY HARDIN LLP
ACCOUNT: ILLINOIS TOOL WORKS INC.
7 TIMES SQUARE
NEW YORK NY 10036-7311

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JAN 3 1 2006

OFFICE OF PETITIONS

In re Application of :
Plourde et al. :
Application No. 10/436,407 :
Filed: May 12, 2003 :
Attorney Docket No. 769-254 Div. :

ON PETITION

This is a decision on the petition under 37 CFR §1.181(a) to withdraw the holding of abandonment, filed March 7, 2005.

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

This application became abandoned for failure to timely submit a response to the non-final Office Action mailed March 2, 2004. The Notice set an extendable 3 month period for reply. No extensions of time pursuant to 37 CFR 1.136(a) were obtained. Accordingly, this application was held abandoned on June 3, 2004. A Notice of Abandonment was mailed on November 10, 2004.

Petitioner asserts that the non-final Office Action mailed on March 2, 2004 was never received. A review of the record indicates the non-final Office Action was mailed to an incorrect correspondence address based upon an old address provided in a prior nonprovisional application declaration. A review of the record shows that the updated correspondence address was provided in the application transmittal letter. See MPEP 601.03. Thus the Office Action was improperly mailed.

This application is being forwarded to Art Unit 3727 for re-mailing of the non-final Office Action to the correct correspondence address of record.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAR -9 2004

Paper No. 4

In re Application of :
Frederick N. Biesecker et al. :
Serial No. 10/436,424 : DECISION ON PETITION
Filed: May 9, 2003 : TO MAKE SPECIAL
For: CONTAINER AND CHILD- :
RESISTANT CLOSURE SYSTEM :

Applicant's petition, filed January 26, 2004, requests that this application be rendered special for examination in that applicant is over sixty-five (65) years of age.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(IV) of the Manual of Patent Examining Procedure (MPEP).

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Martin G. Belisario
Akin Gump Strauss Hauer & Feld, LLP
2005 Market Street, Suite 2200
Philadelphia, PA 19103

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United States Patent and Trademark Office
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OFFICE OF PETITIONS

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

In re Patent No. 7,041,108 :
Issue Date: May 9, 2006 :
Application No. 10/436,445 : ON PETITION
Filed: May 13, 2003 :
Attorney Docket No. 10922/174 :

This is a decision on the petition filed February 5, 2007, under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is granted.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3208. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

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

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

[1]See Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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NIXON PEABODY LLP
300 S. Riverside Plaza
16th Floor
CHICAGO, IL 60606

Mail Date: 04/21/2010

Applicant	: Alfred Thomas	: DECISION ON REQUEST FOR
Patent Number	: 7594848	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/436,453	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1024** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SHUMAKER & SIEFFERT, P.A.
1625 RADIO DRIVE
SUITE 300
WOODBURY, MN 55125

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APR 1 1 2007

OFFICE OF PETITIONS

In re Application of :
Richard J. Mehus et al :
Application No. 10/436,454 :
Filed: May 12, 2003 :
Attorney Docket No. 1092-002US (1758US1) :

ON PETITION

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 7, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 8, 2006.

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

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

This matter is being referred to Technology Center AU 3754 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Shumaker & Sieffert, P.A.
8425 Seasons Parkway, Suite 105
St. Paul, MN 55125

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 07/13/09

TO SPE OF : ART UNIT 1795

SUBJECT : Request for Certificate of Correction for Appl. No.: 10436506 Patent No.: 7368215 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9C62-D
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: _____

Cynthia Kelly SPE 1795

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE	Art Unit

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FROM DIRECTORS OFFICE

DEC 0 3 2004

TECHNOLOGY CENTER 3600

Thorpe North & Western, L.L.P.
P.O. Box 1219
Sandy, UT 84091-1219

In re application of :
William D. Martin :
Application No. 10/436,507 :
Filed: May 9, 2003 :
For: MODULAR CAGE FOR EQUIPMENT AND METHOD OF ASSEMBLING THE SAME

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R §1.102(d) filed September 2, 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 September 2, 2003 lacks requirement 2(C) above. In this regard, the present application file has been reviewed, and no copy can be found of cited reference Project Manual for "Modernization of Thomas James Place", (May 3, 1996), deemed by petitioner to be one of the references most closely related to the subject matter encompassed by the claims. In view of this deficiency, 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.

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

KJD/rwg: 11/01/04

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

RC HARPMAN
HARPMAN & HARPMAN
819 SOUTHWESTERN RUN
YOUNGSTOWN OH 44514

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JAN 12 2006

OFFICE OF PETITIONS

In re Application of		
Rick Altomare	:	
Application No. 10/436,529	:	DECISION ON
Filed: May 14, 2003	:	PETITION
Attorney Docket No. 3411	:	

This is in response to the "REQUEST FOR RECONSIDERATION NOTICE OF ABANDONMENT", filed March 14, 2005, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment, and the petition to revive under 37 CFR 1.137(a), filed September 26, 2005. The petitions were recently forwarded to the Office of Petitions for consideration.

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

The holding of abandonment is **WITHDRAWN**.

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

The above-identified application was held abandoned for failure to timely file a reply to the non-final Office action mailed July 23, 2004. A review of the application file reveals that applicants did timely file an amendment on October 7, 2004. Nevertheless, the Office mailed a Notice of Abandonment on February 25, 2005, stating that no reply to the July 23, 2004 Office action had been received.

In view of the above, it is obvious that the Notice of Abandonment was mailed in error. Accordingly, the holding of abandonment is withdrawn.

Given the basis for granting this petition under 37 CFR 1.181, the petition under 37 CFR 1.137(a) filed on September 26, 2005 need not be considered on the merits. Accordingly, the $250 petition fee has been refunded to petitioner under separate cover.

The application file is being forwarded to Group Art Unit 3711 for consideration of the Amendment filed October 7, 2004.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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Andrew F. Sayko, Jr.
P.O. Box 6339
Shallotte, NC 28470

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MAR 1 4 2006
OFFICE OF PETITIONS

In re Application of
Farahi et al.
Application No. 10/436,530
Filed: May 14, 2003
Attorney Docket No. WGS-2003-B7

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed January 30, 2006, to withdraw the holding of abandonment.

The application became abandoned on September 17, 2005, for failure to reply timely to the nonfinal Office action mailed on June 16, 2005, which set a three-month shortened statutory period for reply. The present petition preceded the mailing of a Notice of Abandonment.

The practitioner asserted that the nonfinal Office action of June 16, 2005, was not received. Consequently, petitioners requested that the Office withdraw the holding of abandonment in the above-identified application.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the nonfinal Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. The showing 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).

In the present petition, the practitioner attested to the fact that a search of the docket folder and docket sheet for the subject application indicated that the nonfinal Office action of June 16, 2005, was not received. The practitioner submitted a copy of the docket sheet for the above-identified application.

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. Accordingly, the petition is **granted**.

This matter is being referred to Technology Center Art Unit 2828 for a review of the amendment submitted on January 30, 2006.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination procedures should be directed to the Technology Center.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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AUG 0 4 2005

MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.
1899 POWERS FERRY ROAD
SUITE 310
ATLANTA GA 30339

In re Application of	:	
Roger Daugherty	:	
Serial No.: 10/436,535	:	DECISION ON PETITION
Filed: May 13, 2003	:	
For: Apparatus and Method for Humidification	:	
Of Inspired Gases	:	

This is in response to applicants' petition filed June 1, 2004 to make the above-identified application special under the provisions of 37 CFR 1.102(a), based on applicant's health condition.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, IV with supporting documentation. Therefore the petition is hereby **GRANTED**.

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

Should there be any questions with regard to this letter please contact Frederick Schmidt by letter addressed to the Director, Technology Center 3700, P.O. Box 1450 Alexandria, VA 22313-1450, or by telephone at (571) 272-2975 or by facsimile transmission at (571) 273-8300.

Frederick R. Schmidt, Director
Technology Center 3700

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Alexandria, VA 22313-1450
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MYERS & KAPLAN
INTELLECTUAL PROPERTY LAW, L.L.C.
CUMBERLAND CENTER II
3100 CUMBERLAND BLVD , SUITE 1400
ATLANTA GA 30339

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JUL 2 5 2007

OFFICE OF PETITIONS

In re Application of	:	
Daugherty, Roger	:	
Application No. 10/436,535	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 21590-RA	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 29, 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 Request for Continued Examination (RCE) and an Amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to Technology Center 3700 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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V. JOHN TILBY
9352 SOUTH 670 WEST
SANDY UT 84020

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OCT 2 6 2005

OFFICE OF PETITIONS

In re Application of	:	
Tilby et al.	:	
Application No. 10/436,538	:	ON PETITION
Filed: May 14, 2003	:	
Attorney Docket No. 3469.TILB.PT	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 12, 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 April 11, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on July 12, 2005. A Notice of Abandonment was mailed on September 26, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue fee transmittal, the issue fee and the publication fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

The Revocation of Power of Attorney or Authorization of Agent submitted with the instant petition on October 12, 2005, is hereby not accepted. Papers filed in an application must be signed by:

(1) An attorney or agent of record appointed in compliance with § 1.34(b);
(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);
(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;
(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or
(5) **All of the applicants (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.**

The Revocation and Power of Attorney submitted with the instant petition was only signed by one of the two listed inventors. In order for the Power of Attorney to be accepted, Daniel M.

Tilby must also sign the document. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

This matter is being referred to the 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

Cc: MORRISS O'BRYANT AND COMPAGNI, PC
136 S MAIN STREET, SUITE 700
SALT LAKE CITY, UT 84101

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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AUG 3 2005

FISH & NEAVE IP GROUP
ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

In re Application of :	:
Lee et al.	:
Serial No.: 10/436,549	: PETITION TO MAKE SPECIAL
Filed: May 12, 2003	:
Attorney Docket No.: EPTM-P01-001	:

This is in response to applicants' petition filed July 22, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on applicants who are small entities having applications relating to biotechnology.

Applicants have satisfied the provisions set forth in M.P.E.P. 708.02, XII (A), (B), and (C). The $130.00 petition fee as required by 37 CFR 1.17(h) was charged to applicant's Deposit Account No. 18-1945, as authorized. Therefore, the petition is **GRANTED**.

Should there be any questions with regard to this letter please contact Marianne C. Seidel by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0584 or by facsimile transmission to the general Office facsimile number.

Marianne C. Seidel
Special Program Examiner
Technology Center 1600

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BAYER MATERIAL SCIENCE LLC
100 BAYER ROAD
PITTSBURGH, PA 15205

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MAR 17 2005

OFFICE OF PETITIONS

In re Application of
Williams, Cooper, Smith, and Jacobs
Application No.: 10/436,557
Filed: May 13, 2003
Attorney Docket No:PO-7803/MD-02-61
For: METHOD OF PREPARING A MOLDED ARTICLE

: DECISION ACCORDING
: RULE 47(a) STATUS

This is in response to the petition under 37 CFR 1.47(a), filed September 22, 2003.

The petition is **GRANTED**.

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

The above-cited application was filed on May 13, 2003, without a properly executed declaration. On July 25, 2003, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Non-provisional Application requiring a declaration signed by all named inventors and a surcharge for the late filing of the declaration. The instant petition was filed on September 22, 2003.

Petitioner has shown that inventor Williams has constructively refused to join the prosecution of the 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 addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JAN 27 2005

In re Application of	:	
James Spooner	:	
Serial No. 10/436,570	:	DECISION ON PETITION
Filed: May 13, 2003	:	TO WITHDRAW AS ATTORNEY
For: EXTRACTION FACILITATING	:	
CORK CLOSURE	:	

By papers filed on August 25, 2004, counsel has petitioned to withdraw as attorney of record in this application.

The petition is GRANTED.

E.R. Kazenske, Director
Technology Center 3700

AZ Patent Law Firm
1101 St. Paul Street, Suite 405
Baltimore, MD 21202

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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PVF -- SUN MICROSYSTEMS INC.
C/O PARK, VAUGHAN & FLEMING LLP
2820 FIFTH STREET
DAVIS, CA 95618-7759

Mail Date: 04/21/2010

Applicant	: Josephus C. Ebergen	: DECISION ON REQUEST FOR
Patent Number	: 7660842	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/436,577	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **832** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Office of Counsel Code OC4
Naval Surface Warfare Center
Indian Head Division
101 Strauss Ave., Bldg. D-31
Indian Head, MD 20640-5035

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MAR 18 2005

OFFICE OF PETITIONS

In re Application of :
Davis, et al. : DECISION ON PETITION
Application No. 10/436,603 :
Filed: May 9, 2003 :
Docket No.: 84,496 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 25, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned May 19, 2004 for failure to timely reply to the non-final Office action mailed February 18, 2004. The Notice 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 September 16, 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.

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
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

Sanofi-Aventis US LLC.
Patent Department
Route#202-206/P,O. Box 6800
Bridgewater, New Jersey 08807-0800

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JAN 16 2007

OFFICE OF PETITIONS

In re Application of
Bamborough et al.
Application No. 10/436,609
Patent No. 6,989,395 B2
Filed: May 13, 2003

: DECISION REGARDING PTA

This decision is in response to applicants' REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed[1] on February 21, 2006 requesting that the USPTO adjust the patent term adjustment determination at the time of the mailing of the notice of allowance from a determination of two hundred and one hundred and fifty-three days to a determination of 334 days.

Patentees request for Patent Term Adjustment reconsidered is **GRANTED-in-Part.** The Office will *adjust the PAIR calculation* at the time of the issuance of the patent to reflect a determination of **335** days. The Office will adjust the PTA calculation reflected in PAIR and also *sua sponte* issue a certificate of correction reflecting this decision.

Patentees assert the one hundred and twenty (120) day reduction and the sixty-one day reduction are improper. Patentees assert that both submission related to those entries that were submitted in response to express request by the Office. Patentees assert that the supplemental response filed on July 28, 2004 was a submission related to a telephonic call from the examiner requesting that applicant submit a new abstract. In addition, patentees assert that the submission of specification after the mail date of the notice of allowance is to provide the Office with a courtesy copy of what had been previously submitted by patentees but did not scan. Patentees assert that the correct number is 334 days.

Patentees' arguments are persuasive to the extent herein. As for the one hundred and twenty day reduction pursuant to 37 CFR 1.704(c)(10), the Office finds that such submission was in fact a response to the Office's request to applicant that they submit a copy of the previously submitted specification because the specification did not scan accurately and the Office needed a copy of the previously submitted specification for publication. Accordingly, the reduction of one

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[1]The patent issued on January 24, 2006. The Office notes that the request to review of the 61-day reduction is only proper because at the time of the notice of allowance the Office provided a notice of zero (0) days. The Office cautions patentees to review the determination prior to paying the issue fee because patentees by waiting to submit the petition under 37 CFR 1.705(d) may have some parts of the petition deemed untimely.

hundred and twenty (120) days is not assessed against patentees. In addition, the reduction of sixty-one (days) is in error because the record does reflect that patentees submitted a response to the Office request for submission of a new abstract. The fax transmittal letter of July 28, 2004 reflects that applicants were submitting the document (abstract) because the examiner contacted attorney Ort and requested a new abstract. Accordingly, the correct amount of Office delay is three hundred and thirty-six (336) days under 37 CFR 1.702(a)(1). The correct amount of applicant delay is one (1) day under 37 CFR 1.704(b). Overall, the correct amount of PTA is 335 days.

After the mailing of this decision, the Office will forward the file to the Certificate of Correction branch for a prompt issuance of a certificate of correction.

The applicants have submitted the $200.00 fee pursuant to 37 CFR 1.18(e). No additional fees are necessary in deciding this petition.

Any questions concerning this letter should be directed to Kery Fries, Senior Legal Advisor, at 571-272-7757.

Kery Fries
Senior Legal Advisor
Office of Deputy Commissioner
For Patent Examination Policy

cc: Adjusted Pair Calculation
DRAFT certificate of correction

Day : Monday
Date: 1/15/2007

PALM INTRANET

Time: 13:23:23

PTA Calculations for Application: 10/436609			
Application Filing Date:	05/13/2003	PTO Delay (PTO):	336
Issue Date of Patent:	01/24/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	183
Post-Issue Petitions:	0	Total PTA (days):	335
PTO Delay Adjustment:	182		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
51	01/15/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	62		
50	01/15/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	120		
46	01/24/2006	PATENT ISSUE DATE USED IN PTA CALCULATION	336		42
45	12/21/2005	RECEIPT INTO PUBS			
44	12/21/2005	DISPATCH TO FDC			
43	12/21/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
42	10/22/2004	ISSUE FEE PAYMENT VERIFIED			
41	02/17/2005	MISCELLANEOUS INCOMING LETTER		120	
40	12/16/2005	RECEIPT INTO PUBS			
39	06/09/2005	WORKFLOW - QUERY REQUEST - FINISH			
38	03/30/2005	WORKFLOW - QUERY REQUEST - FINISH			
37	03/03/2005	WORKFLOW - QUERY REQUEST - FINISH			
36	01/27/2005	WORKFLOW - QUERY REQUEST - BEGIN			
35	01/18/2005	WORKFLOW - QUERY REQUEST - FINISH			
34	08/17/2004	EXPORT TO INITIAL DATA CAPTURE			
33	01/10/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
32	01/07/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
31	10/22/2004	ISSUE FEE PAYMENT RECEIVED			
30	10/19/2004	WORKFLOW - QUERY REQUEST - BEGIN			
29	08/25/2004	RECEIPT INTO PUBS			
28	08/24/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
27	08/11/2004	MAIL NOTICE OF ALLOWANCE			
26	08/09/2004	ISSUE REVISION COMPLETED			

25	08/09/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
24	08/09/2004	CASE DOCKETED TO EXAMINER IN GAU			
23	08/09/2004	NOTICE OF ALLOWABILITY			
22	08/03/2004	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
21	08/09/2004	DATE FORWARDED TO EXAMINER			
20	07/28/2004	SUPPLEMENTAL RESPONSE		62	15
19	07/19/2004	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
18	07/28/2004	WORKFLOW INCOMING AMENDMENT IFW			
17	05/27/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
16	06/03/2004	DATE FORWARDED TO EXAMINER			
15	05/27/2004	RESPONSE AFTER NON-FINAL ACTION		1	11
14	05/27/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
13	05/27/2004	WORKFLOW INCOMING PETITION IFW			
12	05/27/2004	WORKFLOW INCOMING AMENDMENT IFW			
11	02/26/2004	MAIL NON-FINAL REJECTION			
10	02/23/2004	NON-FINAL REJECTION			
9	12/30/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
8	05/13/2003	PRELIMINARY AMENDMENT			
7	12/17/2003	CASE DOCKETED TO EXAMINER IN GAU			
6	07/18/2003	APPLICATION DISPATCHED FROM OIPE			
5	07/18/2003	APPLICATION IS NOW COMPLETE			
4	06/04/2003	CLEARED BY L&R (LARS)			
3	05/30/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/28/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/13/2003	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

Back to PALM | ASSIGNMENT | OASIS | Home page

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,989,395 B2
DATED	:	January 24, 2006
INVENTOR(S)	:	Bamborough 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 (153) days

Delete the phrase "by 153 days" and insert – by 335 days--

5-21-07

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

Patent No.: 7,167,747
Inventor(s): Gunderson, et. al.
Issued : January 23, 2007
Title : IDENTIFICATION OF OVERSENSING USING SINUS R-WAVE TEMPLATE

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and or 1.323.

Respecting the alleged error of the mistranspose of inventors' name, the inventors are printed in accordance with the Declaration submitted at the time of filing the application. Therefore, no correction is in order here under Rules 1.322 or 1.323.

However, your attention is directed to C.F.R. 1.324, wherein a request is being made to add or delete inventor(s), after issuance of the patent.

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

Any petition under 37 CFR 1.324(required fee currently $130) should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or FAX number.

By Mail: Commissioner of Patents and Trademarks
Technology Center 1733/Examiner M. Tolin
Washington, D.C. 20231

For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 305-8309 or (703) 308-8331

Michael C. Soldner
710 Medtronic Parkway, LC 340
Minneaplis, MN 55432

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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Paper No. 4

LUKE K. PEDERSEN
BAKER BOTTS L.L.P.
2001 ROSS AVENUE, 6TH FLOOR
DALLAS, TX 74201-2980

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FEB 0 6 2004

OFFICE OF PETITIONS

In re Application of :
Alberson Dean et al :
Application No. 10/436,641 :
Filed: May 13, 2003 :
Attorney Docket No. 017575.0818 (TAMUS 1843) :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 3627.

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

Transaction List

Search by

Accounting Date: (MMDDYY) Operator ID:

Find...

Accounting Date Starts: Ends:

Name/Number: 10436641

Attrny Docket No:

Deposit Account No.:

Accounting Date	Operator ID	Seq. No.	Txn Src	Fee Code	St	Amount	Name/Number	Dep Acct
05/19/2003	ECOOPER	217	SALE	8021	A	40.00	10436641	
05/15/2003	WASFAW1	91	SALE	2202	A	45.00	10436641	
05/15/2003	WASFAW1	90	SALE	2201	A	84.00	10436641	
05/15/2003	WASFAW1	89	SALE	2001	A	375.00	10436641	

OK Adjustment Detail Authorization Detail Print Screen

128C

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Adjustment date: 07/29/2003  SLUANG1
05/15/2003 WASFAW1  00000053 10436641
01 FC:2001                    -375.00 OP
02 FC:2201                     -84.00 OP
03 FC:2202                     -45.00 OP
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SUITE 1900
MILWAUKEE WI 53202

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OFFICE OF PETITIONS

In re Application of	:	
David R. Hembree	:	
Application No. 10/436,645	:	DECISION GRANTING PETITION
Filed: May 13, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. MTI-31076-B	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 8, 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 an appeal brief; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply of June 8, 2007, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 1733 to consider the appeal brief of June 8, 2007.

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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BRINKS HOFER GILSON & LIONE/CHICAGO/COOK
PO BOX 10395
CHICAGO IL 60610

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DEC 14 2007

OFFICE OF PETITIONS

In re Application of	:	
Darrel A. Recker et al	:	
Application No. 10/436,665	:	DECISION ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 10541-1778	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 18, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed October 17, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on January 18, 2007. A Notice of Abandonment was mailed on May 2, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a request for continued examination, $790 filing fee, and submission as required by 37 CFR 1.114, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the final Office action of October 17, 2006 is accepted as being unintentionally delayed.

This application is being referred to Technology Center AU for processing the request for continued examination and for appropriate action in the normal course of business on the submission under 37 CFR 1.114 filed December 18, 2006.

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

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

Patrick G. Burns, Esq.
GREER, BURNS & CRAIN, LTD.
300 South Wacker Dr., Suite 2500
Chicago, IL 60606

In re Patent No. 6,977,775	:
Issued: December 20, 2005	: DECISION ON PETITION
Application No. 10/436,673	:
Filed: May 13, 2003	:
Docket No.: 2803.67578	:

This is a decision on the petition filed June 26, 2006, which is being treated as a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Inquiries regarding the issuance of a certificate of correction must be directed to the Certificate of Correction Branch at (703) 305-8309.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

SCAN! Please forward case and paper to address shown below.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/18/08

TO SPE OF : ART UNIT 4700 Bethanne Dayoan

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/436673 Patent No.: 6977775

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

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

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

HENRY RANDALL
Certificates of Correction Branch
703-308-9390 ext. _____

Thank You For Your Assistance

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

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

Comments: Henry, I assume this is in relation to the change of inventorship as I don't see a CofC in for this deletion of Ohki (inventor). I have approved the deletion in 11/13/06 document in Edan.

[signature] 2823

SPE Art Unit

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SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

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APR 1 9 2004

OFFICE OF PETITIONS

In re Application of	:	
Shu Yamamoto et al	:	
Application No. 10/436,679	:	NOTICE
Filed: May 12, 2003	:	
Attorney Docket No. 23690-07617	:	

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This application file is being referred to Technology Center AU 2127.

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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FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

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JUN 16 2004
OFFICE OF PETITIONS

In re Application of
Shu Yamamoto, et al.
Application No. 10/436,679
Filed: May 12, 2003
Attorney Docket No. 23690-07617

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed June 8, 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 February 19, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of September 23, 2004 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being referred to OIPE for further processing

Sherry D. Brinkley

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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PO BOX 3267
HOUSTON TX 77253-3267

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OFFICE OF PETITIONS

In re Application of	:	
Pang, et al.	:	
Application No. 10/436,704	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 1789-10901	:	

This is a decision on the petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed February 1, 2005.

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

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed July 9, 2004. This Office action set a shortened statutory period for reply of three months. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 10, 2004. A Notice of Abandonment was mailed on February 4, 2005.

Petitioner has submitted the petition fee and an amendment, and made the proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and

circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. Although a Power of Attorney was received, the person signing the petition did not submit the assignee's statement under 37 C.F.R. 3.73(b). If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

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 extension of time fee submitted with the petition on February 1, 2005was subsequent to the maximum period obtainable for reply (January 9, 2005), this fee has been refunded to petitioner's Deposit Account 02-4345.

The application file is being forwarded to Group Art Unit 2823 for consideration of the amendment filed February 1, 2005.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

cc: Browning Bushman PC
5718 Westheimer
Suite 1800
Houston TX 77057

UNITED STATES PATENT AND TRADEMARK OFFICE

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JJGJR.: 06-05

Paper No: __

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MILLSTEIN & STEINER LLP
163 MADISON AVENUE
PO BOX 1989
MORRISTOWN NJ 07962-1989

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JUN 1 6 2005

OFFICE OF PETITIONS

In re Application of	:	
Chen, et al.	:	
Application No. 10/436,706	:	DECISION ON PETITION
Filing Date: 12 May, 2003	:	
Attorney Docket No. 5199-16	:	

This is a decision on the petition filed on 27 September, 2004, alleging unintentional delay under 37 C.F.R. §1.137(b).

The Office regrets the delay in addressing this matter.

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

BACKGROUND

The record indicates:

- Petitioner failed to reply timely and properly to the Notice of Missing Parts (as to the oath/declaration, surcharge, replacement drawings) mailed on 21 July, 2003, with reply due on or before Monday, 22 September, 2003;

- the application went abandoned after midnight 21 September, 2003;

- it does not appear that the Notice of Abandonment was mailed by the Office before the instant petition was filed;
- for reasons unexplained, Petitioner filed with the instant petition a request and fee for a five- (5-) month extension of time–the fee is refunded via a credit to Deposit Account 02-4270;
- the instant petition (with fee authorization) was filed on 27 September, 2004, and included therewith the reply in the form of the oath/declaration, surcharge and replacement drawings.

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

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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.

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]))

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

Petitioner has satisfied the petition, fee, reply and statement/showing requirements of the regulation.

The record (including the petition filed on 27 September, 2004) does not necessitate a finding that the delay between midnight 21 September, 2003 (the date of abandonment), and 27 September, 2004 (the date of filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on duty of candor and good faith of Applicants Chen, et al., and their Counsel Todd Holmbo (Reg. No. 42,665) when accepting Petitioners' representation that the delay in filing the response was unintentional.[7]

CONCLUSION

The instant petition under 37 C.F.R. §1.137(b) hereby is **granted**, and fees charged as authorized.

The instant application is released to OIPE for further processing as necessary before being forwarded for examination.

---

[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 Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

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OFFICE OF PETITIONS

In re Application of	:	
Feng Chen et al	:	
Application No. 10/436,769	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. TI-35188	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 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 non-final Office action mailed May 10, 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 11, 2004.

Pursuant to petitioner's authorization, Deposit Account No. 20-0668 was charged $1,500.00 for the petition to revive an unintentionally abandoned application.

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

This matter is being referred to Technology Center AU 2816.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6888662	2005-05-03	10436777	2003-05-13	00024.0003.NPUS01

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	/Mike Lindsey/	Date (YYYY-MM-DD)	2009-07-10
Name	Michael Lindsey	Registration Number	39278

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 6888662
Issue Date: May 3,2005
Application No. 10436777
Filed: May 13,2003
Attorney Docket No. 00024.0003.NPUS01

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

This is a decision on the electronic petition, filed July 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 July 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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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
1650 MARKET STREET
PHILADELPHIA, PA 19103

In re application of:
Mollenkopf, et al.
Application No. 10/436,778
Filed: May 13, 2003
For: DEVICE AND METHOD FOR COMMUNICATING DATA SIGNALS THROUGH MULTIPLE POWER LINE CONDUCTORS

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address filed on April 8, 2005.

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

Petitioner has satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED**.

All attorneys/agents associated with customer number 23377 have been withdrawn.

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

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

cc: Manelli Denison & Selter
2000 M Street N.W., Suite 700
Washington, DC 20036-3307

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MARSHALL GERSTEIN & BORUN LLP
233 S WACKER DRIVE SUITE 6300
SEARS TOWER
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Ishikawa, et al.	:	
Application No. 10/436,784	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 11009/36193B	:	

This is a decision on the petition to revive an abandoned application under 37 CFR 1.137(b), filed February 6, 2006.

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

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed July 29, 2005, which set a shortened statutory period for reply of three (3) months. Applicants filed continuation application no. 11/342,519 on January 30, 2006 (January 29, 2006 fell on a Sunday. See 37 CFR 1.7(a)). However, applicants did not include a three month extension of time; accordingly, the two applications lacked continuity. The mailing of this decision precedes the mailing of a Notice of Abandonment.

With the instant petition, petitioner paid the petition fee, submitted the required reply in the form of a three month extension of time, and made the proper statement of unintentional delay.

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 application No. 11/342,519, filed January 30, 2006.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE CA 94085-4040

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OFFICE OF PETITIONS

In re Application of :
Avi Costo :
Application No. 10/436,793 : DECISION ON PETITIONS
Filed: May 12, 2003 :
Attorney Docket No. 42P16191 :

This is a decision on the petition under 37 CFR 1.181 (no fee) to withdraw the holding of abandonment filed June 24, 2008. This is also a decision on the petition filed January 30, 2009 under 37 CFR 1.137(b), to revive the above-identified application.

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

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

The above-identified application became abandoned for failure to reply in a timely manner to the final rejection mailed June 14, 2007.

The petition under 37 CFR 1.181 states that "This information is being submitted promptly after applicant has learned of the abandonment on the basis of: Receiving a call from Examiner Wong." However, no evidence was presented as to when or how the above occurred. Additionally, compliance under 37 CFR 1.181(a) has not been met. Therefore, the petition under 37 CFR 1.181 is dismissed.

However, the petition under 37 CFR 1.137(b) to revive the above-identified application, 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 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 June 14, 2007, 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 Tchnology Center AU 2416 for appropriate action by the Examiner in the normal course of business on the reply received January 30, 2009.

Karen Creasy

Karen Creasy
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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APR - 5 2005

PAUL, HASTINGS, JANOFSKY & WALKER, LLP
P. O. BOX 919092
SAN DIEGO, CA 92191-9092

In re Application of	:
Kopcho et al	:
Serial No.: 10/436,799	: PETITION DECISION
Filed: May 12, 2003	:
Attorney Docket No.: 45198.00044	:

This is in response to the petition under 37 CFR 1.181, filed January 5, 2005, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the examiner mailed an Office action to applicants on July 1, 2004, setting a three month shortened statutory period for reply. Applicants filed a reply by facsimile on December 30, 2004, with Assignment Division. The reply was received after normal business hours. The Office was closed on December 31, 2004, and January 1-2, 2005. Thus the facsimile transmission was not retrieved by Assignment Division until January 3, 2005. Notification of non-acceptance of the papers was sent to applicants on January 4, 2005, by facsimile. Assignment Division is a separate Office within the USPTO and is authorized to receive only papers directed to recordation of Assignments of pending applications, patents and trademarks. Assignment Divisions' facsimile number is significantly different (other than area code) from the number for replies to Office actions. They are not authorized to receive any other types of transmission or to forward any other types of transmission to the rest of the Office. It is also noted that the Office action on the last pages thereof contains the correct Office facsimile number to which replies may be facsimile transmitted. Applicants' failure to follow the clear directions in the Office action or the direction for facsimile transmission of replies to Office action set forth in M.P.E.P. 502.01 has resulted in the reply being received untimely. In view thereof, the abandoned status of this application is not withdrawn. A Notice of Abandonment has not yet been mailed to applicants.

The petition is **DISMISSED**.

A formal Notice of Abandonment will be forthcoming.

Applicants may revive this application by filing a petition under 37 CFR 1.137(a) or (b), directed to the Office of Petitions. Any renewed petition must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely. (See M.P.E.P. 711.03(c) for further instruction.)

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

Bruce M. Kisliuk
Director, Technology Center 1600

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OFFICE OF PETITIONS

In re Application of	:	
Joseph J. Kopcho, et al.	:	
Application No. 10/436,799	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 41598.00044.UTL	:	

This is a decision on the petition under 37 CFR 1.137(b) filed May 3, 2005 and on the petition under 37 CFR 1.182 to Expedite filed August 17, 2005, 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 July 1, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight on October 1, 2004.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, the $1020 extension of time submitted was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

The petition satisfies the requirement of 37 CFR 1.137 (b) in that petitioner has supplied (1) the reply in the form of an Amendment; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay.

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

The petition under 37 CFR 1.182 is **granted.**

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

The application matter is being referred to Technology Center 1600, Art Unit 1624 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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PAUL HASTINGS JANOFSKY & WALKER
P.O. BOX 919092
SAN DIEGO, CA 92191-9092

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OFFICE OF PETITIONS

In re Application of	:	
Kopcho et al	:	
Application No. 10/436,799	:	DECISION ON PETITION
Filed: May 12, 2003	:	TO WITHDRAW
Attorney Docket No. 45198.00044.UTL	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 4, 2005.

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

A review of the file record indicates that the power of attorney to C. Amy Smith, Ph.D. and all the attorneys/agents of record who is associated with customer No. 36183 have been revoked by the assignee of the patent application on December 13, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

This application is being referred to Technology Center AU 1624.

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: STERNE KESSLER GOLDSTEIN & FOX
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

UNITED STATES PATENT AND TRADEMARK OFFICE

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GANZ LAW FIRM
PO BOX 2200
HILLSBORO OR 97123

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OFFICE OF PETITIONS

In re Application of :
Cioanta, et al. :
Application No. 10/436,804 : DECISION ON PETITION
Filed: May 12, 2003 :
Attorney Docket No. ACMI 2.036 US :

This is a decision on the petition under 37 C.F.R. § 1.78(a)(3), filed December 7, 2005, which is also being treated as a petition under 37 C.F.R. § 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 nonprovisional application 10/011,494 and provisional application no. 60/248,109.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §§ 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 C.F.R. §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 C.F.R. §§ 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 C.F.R. §§ 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 C.F.R.

> §§ 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 amendment is not acceptable as drafted since it improperly incorporates by reference application no. 10/011,494. 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). See also MPEP §§ 201.06(c) and 608.04(b).

Before the petition under 37 C.F.R. §§ 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 C.F.R. §§ 1.121 and 1.76(b)(5)) to correct the above matter are required.

Receipt of the $1,370 is acknowledged.

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

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at 571-272-3207.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 5

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AUG 1 8 2003

OFFICE OF PETITIONS

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

In re Application of
Keum-Joo Lee
Application No. 10/436,807
Filed: May 13, 2003
Attorney Docket No: 5649-1058

DECISION GRANTING PETITION

This is a decision on the petition filed July 28, 2003, under 37 CFR 1.10(c) requesting that the above-cited application be accorded a filing date of May 13, 2003, rather than the presently accorded filing date of May 14, 2003.

Petitioner alleges that the application was deposited with the Express Mail Service on May 13, 2003. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV193585225US (the same Express Mail label number was placed on the original application papers located in the official file) showing a "date-in" of May 13, 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 13, 2003.

Any inquiries related to this decision should be directed to the undersigned at (703) 305-0010

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Pape

DATE : 3-15-05

TO SPE OF : ART UNIT 2859

10/436,821

SUBJECT : Request for Certificate of Correction on Patent No.: 6826841

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

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

With respect to the change(s) requested, correcting Office and/or Applicant's errors, sho patent read as shown in the certificate of correction? No new matter should be introduced, r the scope or meaning of the claims be changed.

Please check Drawing Sheets

Thank You For Your Assistance

Certificates of Correction

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
- ☐ Denied — State the reasons for denial below.

Comments:

Drawings are approved.

G. Bradley Bennett, primary examiner, AU 2859
3.22.5

SPE

2859

A

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and

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

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Steven Feldman et al	:	
Application No. 10/436,835	:	
Filed: May 13, 2003	:	
Attorney Docket No. 58433US002	:	

This is a decision on the petition, filed December 3, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee. This application issued into Patent No. 6,824,427 on November 30, 2004.

The petition is **DISMISSED as moot.**

Unfortunately, the petition reached the appropriate official for decision after the patent issued on the above-identified application.[1] The inconvenience caused petitioner in this matter is sincerely regretted.

The information disclosure statement (IDS) has been placed in the file of the above-identified application without further consideration. See 37 CFR 1.97(i).

The Request for Continued Examination (RCE) submitted with the petition is not effective and will not be entered since the petition to withdraw from issue is dismissed.

Petitioner is reminded that petitions to withdraw from issue should either be faxed to the Office of Petitions at (571) 273-0025 or hand carried to Madison Building West, 600 Dulany Street, Alexandria Va. 22314.

Petitioner's attention is also directed to 37 CFR 1.313(d), which states: A petition under this section [37 CFR 1.313(c)] will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials before the date of issue."

---

[1] The petition was received in the Office of Petitions on December 8, 2004, after issuance of the instant application into a patent.

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

This patented file is being referred to Files Repository.

Karen Creasy

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

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INTELLECTUAL PROPERTY GROUP
BOSE MCKINNEY & EVANS
2700 FIRST INDIANA PLAZA
135 NORTH PENNSYLVANIA STREET
INDIANAPOLIS IN 46204

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JAN 20 2006

OFFICE OF PETITIONS

In re Application of	:	
Robert Cramer	:	
Application No. 10/436,841	:	DECISION GRANTING PETITION
Filed: May 13, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 12406-0009	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 15, 2005, to revive the above-identified application.

The petition is **GRANTED**.

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

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of February 10, 2005, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 1732.

Karen Creasy

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

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KEVIN L. MCLAREN
BARNES & THORNBURG
11 SOUTH MERIDIAN STREET
INDIANAPOLIS, INDIANA 46204

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OCT 06 2003

OFFICE OF PETITIONS

In re Application of
Mark S. Cushman et al
Application No. 10/436,845
Filed: May 13, 2003
Attorney Docket No. 3220-72764

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 1600.

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

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

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OFFICE OF PETITIONS

In re Application of	:	
Paul Fenton, et al.	:	
Application No. 10/436,857	:	DECISION ON PETITION
Filed: May 13, 2003	:	TO WITHDRAW
Attorney Docket No. 081676-0214 AXYL-0186	:	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 23, 2009.

The request is **NOT APPROVED**.

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

The request cannot be approved because the forwarding correspondence address listed on the withdrawal is not of the first named inventor or a properly intervening assignee under 37 CFR 3.71(c).

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 Johnson at 571-272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Paul Westhaver**
c/o St. Andrews Cross
5 Holly Lane
Dartmouth, Nova Scotia
Canada, B2X3S1

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April 7, 2007

Patent No. : 6,931,832, B2
Ser. No. : 10/436861
Inventor(s) : Berg, et al.
Issued : Aug. 23, 2005
Title : **MONOPROPELLANT COMBUSTION SYSTEM**
Docket No. : EH-10739

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.

Comparison of the patent in **column 6, line 56**, with the corresponding location in the application file reveals that there is no discrepancy.

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

Elisha Evans
For Cecelia Newman, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 110

BACHMAN & LAPOINTE, P.C.
900 CHAPEL STREET
SUITE 1201
NEW HAVEN CT 06510

CBN/eme

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JAN 21 2004

Office of the Director
Group 3600

CONN. ANALYTICAL CORP.
Att: Joseph J. Bango, Jr.
696 AMITY ROAD
BETHANY, CT 06524

In re application of
John B. Fenn
Application No. 10/436,869
Filed: May 13, 2003
For: WICK INJECTION OF COLLOIDAL FLUIDS FOR SATELLITE PROPULSION

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on May 13, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age. The delay in deciding this petition is sincerely regretted.

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 statement from the applicant stating that he is 85 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**.

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

SNM/cps 1/15/04

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CONN, ANALYTICAL CORP.
ATT: JOSEPH J. BANGO, JR.
696 AMITY ROAD
BETHANY, CT 06524

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OCT 2 6 2005

OFFICE OF PETITIONS

In re Application of	:	
John B. Fenn	:	
Application No. 10/436,869	:	ON PETITION
Filed: May 13, 2003	:	
For: Wick Injection of Colloidal Fluids For Satellite	:	
Propulsion	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 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 October 9, 2004.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

This matter is being referred to Technology Center AU 3746.

Wan Laymon
Petitions Examiner
Office of Petitions

cc: GEORGE N. CHACLAS
PO BOX 55874
BOSTON, MA 02205

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/20/06

TO SPE OF : ART UNIT 1725

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/436882** Patent No.: **7060930**

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.

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

Comments: _____

_____ **SPE**

1725 **Art Unit**

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

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MAY 0 6 2004

OFFICE OF PETITIONS

In re Application of	:	
Muller et al.	:	
Application No. 10/436,894	:	ON PETITION
Filed: 13 May, 2003	:	
Attorney's Docket No. 0275M-00727	:	

This is a decision on the petition filed on 16 March, 2004, requesting that the above-identified application be accorded a filing date of 13 May, 2003, with seven (7) sheets of drawings, including Figure 12, as a part of the original disclosure.

The petition is granted.

The application was filed on 13 May, 2003.

Accordingly, on 21 July, 2003, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, stating that the application had been accorded a filing date of 13 May, 2003, but that Figure 12 described in the specification appeared to have been omitted. The statutory basic filing fee, oath or declaration, and surcharge for their late filing were also required.

In response, on 8 September, 2003, the present petition and a copy of seven (7) sheets of drawings containing Figures 1-12 were filed. Petitioners argue that one sheet of drawings containing Figure 12 was filed with the other application papers on 13 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 shows an Office date stamp of 05/13/03, the above-identified application number, and identifies the application by the first named inventor's name, attorney docket number, and invention title, and acknowledges receipt of, *inter alia*, "7 Sheets of Formal Drawings showing Figures 1-12". Petitioners request that the application, including one (1) sheet

of drawings containing Figure 12, be accorded a filing date of 13 May, 2003.

A review of the record reveals that six (6) sheets of drawings containing Figures 1-11 have been located among the application papers received on 13 May, 2003. However, the evidence is convincing that the application papers deposited on 13 May, 2003, included seven (7) sheets of drawings, one of which was subsequently misplaced in the Office. Therefore, the application, including the one (1) sheet of drawings containing Figure 12 described in the specification, is entitled to a filing date of 13 May, 2003.

The "Notice" mailed on 21 July, 2003, is vacated to the extent that it states that Figure 12 appeared to have been omitted.

In view of the above, the petition is granted. The petition fee of $130.00 is unnecessary and will be refunded to counsel's deposit account, No. 02-2550.

The application will be processed with the copy of one (1) sheet of drawings containing Figure 12 supplied on 8 September, 2003, as a part of the original disclosure. The copy 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 application file.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 13 May, 2003, using the application papers filed on that date, and the copy of one (1) sheet of drawings containing Figure 12 supplied with the present petition.

Telephone inquires 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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JUL 22 2005

PAUL, HASTINGS, JANOFSKY & WALKER, LLP
P. O. BOX 919092
SAN DIEGO, CA 92191-9092

In re Application of	:
K. Raja Reddy et al	:
Serial No.: 10/436,922	: PETITION DECISION
Filed: May 12, 2003	:
Attorney Docket No.: 45198.00043	:

This is in response to the petition under 37 CFR 1.181, filed January 5, 2005, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the examiner mailed an Office action to applicants on July 1, 2004, setting a three month shortened statutory period for reply. Applicants filed a reply by facsimile on December 30, 2004, with Assignment Division. The reply was received after normal business hours. The Office was closed on December 31, 2004, and January 1-2, 2005. Thus the facsimile transmission was not retrieved by Assignment Division until January 3, 2005. Notification of non-acceptance of the papers was sent to applicants on January 5, 2005, by facsimile. Assignment Division is a separate Office within the USPTO and is authorized to receive only papers directed to recordation of Assignments of pending applications, patents and trademarks. Assignment Divisions' facsimile number is significantly different (other than area code) from the number for replies to Office actions. They are not authorized to receive any other types of transmission or to forward any other types of transmission to the rest of the Office. It is also noted that the Office action on the last pages thereof contains the correct Office facsimile number to which replies may be facsimile transmitted. Applicants' failure to follow the clear directions in the Office action or the direction for facsimile transmission of replies to Office action set forth in M.P.E.P. 502.01 has resulted in the reply being received untimely. In view thereof, the abandoned status of this application is not withdrawn. A Notice of Abandonment has not yet been mailed to applicants.

The petition is **DISMISSED**.

A formal Notice of Abandonment will be forthcoming.

Applicants may revive this application by filing a petition under 37 CFR 1.137(a) or (b), directed to the Office of Petitions. Any renewed petition must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely. (See M.P.E.P. 711.03(c) for further instruction.)

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

Bruce M. Kisliuk
Director, Technology Center 1600

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OFFICE OF PETITIONS

PAUL, HASTINGS, JANOFSKY & WALKER LLP
P.O. BOX 919092
SAN DIEGO CA 92191-9092

In re Application of	:	
REDDY et al.	:	DECISION
Application No. 10/436,922	:	ON PETITION
Filed: May 12, 2003	:	
Attorney Docket No. 41598.00043.UTL	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 15, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 1, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained in a timely manner. Accordingly, the application became abandoned on October 2, 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 (3) an adequate statement of unintentional delay have been received. Accordingly, the reply to the non-final action of July 1, 2004 is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1020 extension of time fee submitted with an Amendment 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 Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Technology Center Art Unit 1624.

Frances Hicks
Petitions Examiner
Office of Petition

UNITED STATES PATENT AND TRADEMARK OFFICE

JUL 25 2005

Paul Hastings

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JUL 22 2005

DOCKETED
JUL 27 2005
PAUL HASTINGS

PAUL, HASTINGS, JANOFSKY & WALKER, LLP
P. O. BOX 919092
SAN DIEGO, CA 92191-9092

In re Application of	:	
K. Raja Reddy et al	:	
Serial No.: 10/436,922	:	PETITION DECISION
Filed: May 12, 2003	:	
Attorney Docket No.: 45198.00043	:	

This is in response to the petition under 37 CFR 1.181, filed January 5, 2005, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the examiner mailed an Office action to applicants on July 1, 2004, setting a three month shortened statutory period for reply. Applicants filed a reply by facsimile on December 30, 2004, with Assignment Division. The reply was received after normal business hours. The Office was closed on December 31, 2004, and January 1-2, 2005. Thus the facsimile transmission was not retrieved by Assignment Division until January 3, 2005. Notification of non-acceptance of the papers was sent to applicants on January 5, 2005, by facsimile. Assignment Division is a separate Office within the USPTO and is authorized to receive only papers directed to recordation of Assignments of pending applications, patents and trademarks. Assignment Divisions' facsimile number is significantly different (other than area code) from the number for replies to Office actions. They are not authorized to receive any other types of transmission or to forward any other types of transmission to the rest of the Office. It is also noted that the Office action on the last pages thereof contains the correct Office facsimile number to which replies may be facsimile transmitted. Applicants' failure to follow the clear directions in the Office action or the direction for facsimile transmission of replies to Office action set forth in M.P.E.P. 502.01 has resulted in the reply being received untimely. In view thereof, the abandoned status of this application is not withdrawn. A Notice of Abandonment has not yet been mailed to applicants.

The petition is **DISMISSED**.

A formal Notice of Abandonment will be forthcoming.

Applicants may revive this application by filing a petition under 37 CFR 1.137(a) or (b), directed to the Office of Petitions. Any renewed petition must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely. (See M.P.E.P. 711.03(c) for further instruction.)

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

Bruce M. Kisliuk
Director, Technology Center 1600

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C. AMY SMITH, PH. D., ESQ.
PAUL, HASTINGS, JANOFSKY & WALKER LLP
P.O. BOX 919092
SAN DIEGO, CA 92191-9092

In re Application of	:	
K. Raja Reddy, et al.	:	
Application No. 10/436,922	:	DECISION ON REQUEST
Filed: May 12, 2003	:	TO WITHDRAW
Attorney Docket No. 45198.00043.UTL	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §1.36(b), filed October 4, 2005.

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

A review of the file record indicates that the power of attorney to C. Amy Smith, Ph.D., Esq. and all the attorneys/agents of record associated with Customer No. 36183 was revoked by the assignee of the patent application on December 6, 2005. 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 an outstanding Office action mailed March 17, 2006 that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to Sherry D. Brinkley at 571-272- 3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Conferee:

cc: STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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

SEAGATE TECHNOLOGY
C/O MOFO SF
425 MARKET STREET
SAN FRANCISCO, CA 94105

COPY MAILED

OCT 19 2007

OFFICE OF PETITIONS

In re Application of	:	
LEUTHOLD, et al.	:	
Application No. 10/436,925	:	DECISION ON PETITION
Filed: May 12, 2003	:	TO WITHDRAW
Attorney Docket No. **8209.024.CNUS00**	:	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 8, 2007.

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

A review of the file record indicates that the power of attorney to SEAGATE TECHNOLOGY C/O MOFO SF has been revoked by the assignee of the patent application on June 29, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

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

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ALEXANDRIA, VA 22313-1450

Paper No. 8

JONATHAN O. OWENS
HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE, CA 94086

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FEB 09 2004

OFFICE OF PETITIONS

In re Application of	:	DECISION ACCORDING
Burmester et al.	:	STATUS UNDER
Application No. 10/436,930	:	37 CFR 1.47(a)
Filed: May 12, 2003	:	
Attorney Docket No. CONF-00201	:	

This decision concerns the January 2, 2004 "Petition to File Declaration Without the Inventor's Signature under 37 CFR 1.47(a)."

The petition under 37 CFR 1.47(a) is **GRANTED.**[1]

Four inventors are named in this application which, upon filing, included an unsigned declaration. On July 2, 2003, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, setting forth an extendable, nonstatutory, 2-month period for submitting a proper oath or declaration. The petition then followed, accompanied by a request for a 4-month extension of time, the $740 extension-of-time fee (small entity), and a declaration signed by all but 1 of the named inventors ("1/2/04 Declaration").

The petition asserts that the non-signing inventor, Ruth Michelle Lassman ("Lassman"), refuses to sign the application papers, and requests that the available inventors be allowed to file the application on behalf of themselves and Lassman.

Under 37 CFR 1.47(a), the available inventors may file this application on behalf of themselves as well as Lassman provided that a *bona fide* attempt has been made to present to Lassman, for review and signature, a copy of the entire application (specification including claims; drawings), and that the latter refuses to join in this application.[2]

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[1] **The concurrently filed "Petition to Exclude Inventors from Access to Application File" will be decided separately. 37 CFR 1.4(c); MPEP 106 (Rev. 1, Feb. 2003) (Any request to prevent the inventor from obtaining access to the file should be filed as a separate paper . . .).**

[2] See MPEP section 409.03(d) (Rev. 1, Feb. 2003).

To show that Lassman has refused to join in this application despite such a *bona fide* attempt, the petition must include, *inter alia*, a statement of facts concerning the circumstances of the presentation of the application papers to Lassman at her last known address,[3] and her subsequent refusal.[4]

The petition and the accompanying exhibits indicate that:

-counsel for Assignee had:
- -mailed, *inter alia*, a copy of the entire application to Lassman at her last known address on August 6, 2003 and again on September 17, 2003;
- -e-mailed Lassman's attorney on December 2, 2003 and again on December 18, 2003 regarding the application;

and that,

-as of December 30, 2003, when the instant petition was being prepared for filing, no response was received from Lassman or her attorney.

In view of the above, the Office concludes that a *bona fide* attempt had been made to secure Lassman's signature on the declaration, but that the latter refused to join in the application. The petition is thus granted. The 1/2/04 Declaration is hereby accepted. The application is now complete.

In addition, the Office acknowledges receipt with the petition of the $130 petition fee and the $65 surcharge (small entity) for lacking an acceptable oath/declaration upon filing of the application.

Finally, as provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to Lassman at her last known address provided in the petition:

1551 Redwood Court
Mountain View, CA 94041

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

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

RC Tang
Petitions Attorney
Office of Petitions

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[3] 37 CFR 1.47(a); MPEP section 409.03(e) (Rev. 1, Feb. 2003).

[4] MPEP 409.03(d) (Rev. 1, Feb. 2003).

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Ruth Michelle Lassman
1551 Redwood Court
Mountain View, CA 94041

COPY MAILED

FEB 09 2004

OFFICE OF PETITIONS

LETTER

In re Application of :
Burmester et al. :
Application No. 10/436,930 :
Filed: May 12, 2003 :
For: METHOD OF AND APPARATUS FOR :
INTERACTIVE SPECIFICATION OF :
MANUFACTURED PRODUCTS :
CUSTOMIZED WITH DIGITAL MEDIA :

Dear Ms. Lassman,

You are named as one of the joint-inventors 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 for the United States Patent and Trademark Office [USPTO]). Should a patent be granted on the application, you will be designated therein as one of the joint-inventors.

As one of the named inventors, 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 pursuant to 37 CFR 1.19), or make your position of record in the application. Alternatively, you may do any of the aforementioned through an attorney or agent registered to practice before the USPTO and 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.

Requests for information regarding this application should be directed to the File Information Unit at (703) 308-2733. For information on how to order a copy of the application or a specific paper in the application, contact the Certification Division at (703) 308-9726 or 1-(800) 972-6382 (outside the Washington DC area). Telephone inquiries regarding this letter should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions
Office of the Commissioner for Patents

cc: Jonathan O. Owens, Esq.
Haverstock & Owens LLP
162 North Wolfe Road
Sunnyvale, CA 94086

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HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE CA 94086

COPY MAILED
FEB 1 0 2004
OFFICE OF PETITIONS

In re Application for: Burmester, et al.
Application No. 10/436,930
Filed: May 12, 2003
For: Method of and Apparatus for Interactive Specification of Manufactured Products Customized with Digital Media

Decision on Petition

This is in response to the "Petition to Exclude Inventors from Access to Application File," filed January 2, 2004.

The petition is dismissed.

The above-identified application will be published as a patent application on May 20, 2004. It is not practical to allow the public to access or to obtain a copy the application, but to exclude the inventor.

As recognized by applicant, pursuant to Manual of Patent Examining Procedure, Section 106, it is permissible to exclude an inventor who has assigned his or her interest in the patent application, upon request of the assignee. The argument that confoti, Inc. should be treated as the assignee is not, however, persuasive. The Office does not intervene in ownership disputes and will not decide whether the employment agreement makes confoti, Inc. the owner of the non-signing inventor's interest. Ownership disputes are properly decided by the court of competent jurisdiction over the employment contract. See Regents of the University of New Mexico v. Knight, 66 USPQ2d 1001 (CA FC 2003), Jim Arnold Corp. v. Hydrotech Sys., Inc., 109 F.3d 1567, 1572, 42 USPQ2d 1119, 1123 (Fed. Cir. 1997), University of West Virginia, Board of Trustees v. VanVoorhies, 61 USPQ2d 1449 (CA FC 2002) and Chou v. Univ. of Chi., 254 F.3d 1347, 1357, 59 USPQ2d 1257, 1261(Fed. Cir. 2001) (decisions applying state law to ownership disputes). For an application that is published, however, as stated above, it is not practical to exclude a nonsigning inventor from access, and even if confoti is shown to be the assignee, the nonsigning inventor would still be permitted to obtain a copy of the file history.

Telephone inquiries related to this determination should be directed to the undersigned at (703) 306-3159.

Karin Ferriter

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

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601 CALIFORNIA ST
SUITE 1111
SAN FRANCISCO CA 94108

COPY MAILED

FEB 14 2005

OFFICE OF PETITIONS

Applicant: Chen et al.
Application No. 10/436,931
Filing Date: May 12, 2003
For: PERSONAL DIGITAL ASSISTANT ASSEMBLY
Pub. No.: US 2004/0066616 A1
Pub. Date: April 8, 2004

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on June 14, 2004, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because the Notice of Publication includes an incorrect customer number and mailing address and the patent application publication includes an error on the front page of the publication as mailing address is incorrect.

37 CFR 1.221(b) states "Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." .[1]

The request for corrected publication received on June 14, 2004, was not timely filed under 37 CFR 1.221(b), and has not been considered because it was not timely filed.

The error in the correspondence address on the front page of the publication is an Office mistake, but it is not a material mistake as required by 37 CFR 1.221(b). The error in the correspondence address does not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. Furthermore, sine the correspondence address frequently changes third parties can check the Office records.

With respect to the Notice of Publication, it is a courtesy notice sent to applicants before the

---

[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).

application publishes and it can not be corrected.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

Any request for reconsideration of this decision, should be addressed as follows:

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

By facsimile: (703) 872-9306

Inquires concerning this communication should be directed to Mark Polutta at (571) 272-7709..

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

Enclosure: Corrected Filing Receipt

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Paper No. 4

Gary Abelev
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
44th Floor
New York, New York 10112

MAILED

OCT 24 2003

Technology Center 2100

In re Application of:
Marco PAGNANO et al.
Application No. 10/436,955
Filed: May 13, 2003
For: ARRANGEMENT, STORAGE MEDIUM AND METHOD FOR PROVIDING INFORMATION WHICH IS OBTAINED VIA A DEVICE TYPE MANAGER, AND TRANSMITTED IN AN EXTENSIBLE MARK-UP LANGUAGE FORMAT OR A HYPERTEXT MARK-UP LANGUAGE FORMAT

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed on May 15, 2003, under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

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(i);
>
> (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
>
> (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;

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

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

In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

Applicant's submissions of May 15, 2003 meet all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. § 1309.

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

#4
8/1/03

UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 0 1 2003

TECHNOLOGY CENTER 2100

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Paper No. 4

Baker & Botts L.L.P.
30 Rockefeller Plaza
New York, New York 10112

In re Application of: Marco Pagnano et al.	)	
Application No. 10/436,956	)	
Filed: May 13, 2003	)	
For: ARRANGEMENTS, STORAGE MEDIUMS AND METHODS FOR ASSOCIATING AN EXTENSIBLE STYLESHEET LANGUAGE DEVICE DESCRIPTION FILE WITH A NON-PROPRIETARY LANGUAGE DEVICE DESCRIPTION FILE	)	**DECISION ON PETITION FOR ACCELERATED EXAMINATION UNDER M.P.E.P. §708.02(VIII)**

This is a decision on the petition filed on May 13, 2003 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

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

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

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

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

(c) Submits a statement(s) that a pre - examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;

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

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

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

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

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

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WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304-1050

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AUG 25 2006
OFFICE OF PETITIONS

In re Application of	:	
Alexander Khairkhalan et al	:	
Application No. 10/436,959	:	DECISION ON PETITION
Filed: May 12, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 33108-701.505	:	

This is a decision on the petition, filed June 22, 2006, 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 11, 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 "Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing," which sets forth the projected publication date of November 23, 2006, was mailed under separate cover on August 17, 2006.

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

This application is being referred to Technology Center Art Unit 3734 for examination in due course.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO CA 94403

In re Application of: KHAIRKHAHAN, ALEXANDER, et al Serial No. 10/436,959 Filed: May 12, 2003 Docket: 10078-701.505 Title: SYSTEM FOR IMPROVING CARDIAC FUNCTION	DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the petition, filed March 18, 2009 under 37 CFR 1.181 requesting supervisory review of the advisory action mailed February 27, 2009. In the petition, petitioner requests entry of the amendment after final filed on December 16, 2008 under 37 CFR 1.116. The petition is being considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

The examiner was requested to enter the amendment after final filed on December 16, 2008 for appeal purposes because the amendment neither raised new issues nor added new claims. In particular, the applicant merely canceled claims 187, 189 and 191 to reduce the appealable issue for appeal purposes. Therefore, there is no reason not to enter the amendment after final for appeal purposes.

In finding petitioner's points of argument persuasive, the requested relief is granted. The advisory action mailed on February 27, 2009 is hereby vacated. A new advisory action will be issued in due course consistent with the present decision.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3773 for issuance of a new advisory action and consideration of the appal brief filed on February 13, 2009. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED.

Donald T. Hajec, Director
Technology Center 3700

OCT 16 2006

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Commissioner for Patents
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BRIAN D. GILDEA
APPLIED BIOSYSTEMS
500 OLD CONNECTICUT PATH
FRAMINGHAM, MA 01701

In re Application of
Hyldig-Nielson et al
Serial No: 10/436,962
Filed: 13 May 2003
Attorney Ref No. BP0202-US

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.144, filed on 22 September 2006, to review the restriction requirement.

BACKGROUND

A review of the file history shows that the on 14 November 2005, the examiner required a restriction between:

Group I, claims 1-11, 21-22 and 71, drawn to a PNA probe and kit, classified in class 536, subclass 24.32;

Group II, claims 41, drawn to a method for determining Listeria in a sample using one or more of the probes having SEQ ID Nos 1-13, classified in class 435, subclass 6;

Group III, claims 41, drawn to a method for determining Listeria monocytogenes in a sample using one or more of the probes having SEQ ID Nos 14-26, classified in class 435, subclass 6.

The restriction further required applicant to select a single sequence for examination.

On 14 December 2005, applicants elected Group I, and SEQ ID No 1 with traverse.

On 21 March 2006, the examiner mailed an Office action on the merits in which the traversal was considered but deemed not persuasive. The restriction requirement was made FINAL. Claims 1-11, 21-22, 71, 84-93 were examined with regard to SEQ ID No 1.

Claims 2, 22, 71, 84 and 90-91 were objected to for reciting non-elected subject matter.

Claims 1, 3-8, 11, 21, 85-87 and 89 were rejected under 35 USC 102(b) as being anticipated by Hogan.

Claims 1, 9-11 and 88 were rejected under 35 USC 102(e) as being anticipated by Rigby.

Claims 71, 92 and 93 were rejected as being unpatentable under 35 USC 103(a) over Hogan et al in view of Vaneechoutte et al and Buck et al.

Claims 2, 22 and 90 were rejected as being unpatentable under 35 USC 103(a) over Hogan et al, as applied to claims 1, 3-5, 8, 11, 85-87 and 89 and in view of Vaneechoutte et al and Buck et al.

Applicants filed a response to the Office action and this petition on 22 September 2006.

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.144, to request review of the restriction requirement has been considered. This decision will

(A) clarify the restriction requirement,

(B) address applicants' arguments concerning the ten sequence waiver in 803.04

(C) address applicants' arguments concerning provisional election of species and examination practice in 803.02 and

(D) point out some possible rejoinder options, should the elected invention be deemed allowable.

A. Clarification of the Restriction Requirement

At the onset, it is noted that the restriction requirement incorrectly stated that the probes are unrelated. The probes are related in terms of modes of operation and effect as the specification discloses using the primers to detect *Listeria*.

However, the related inventions are distinct for the following reasons:

> Inventions having SEQ ID Nos 1-26 are directed to related products. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have a materially different design. The primers are structurally diverse. A comparison of SEQ ID No 1-7, set forth below as examples, shows no significant sequence homology required by all seven probes.

<400> 1
ttcctccgtt cgttcg

<400> 2
taaggtcatt cgttcg

<400> 3
ttcgtctgtt cgttcga

<400> 4
aactttggaa gagca

<400> 5
agcaccaaag gagc

<400> 6
ccccaactta caggc

<400> 7
actcttatcc ttgttctt

Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

For the reasons set forth above, the probes having SEQ ID Nos 1-26 are distinct. Search and examination of more than one probe would be burdensome for the following reasons. Examination of a probe having SEQ ID No 1 would require a search query of the databases for SEQ ID No 1, which is not likely to result in prior art pertinent for a probes having SEQ ID No 2-26. Examination of a probe having SEQ ID No 2 would require a search query of the databases for SEQ ID No 2, which is not likely to result in prior art pertinent for probes having SEQ ID No 1 or 3-26.

Moreover, the claimed probes are burdensome to search and examine because they not limited to the fully defined sequence in the sequence listing. See claim 2 below.

2. (Currently Amended) A PNA probe comprising a probing nucleobase sequence for detecting, identifying and/or quantitating Listeria in a sample ~~The PNA probe of claim 1~~, wherein at least a portion of the probing nucleobase sequence is at least ninety percent homologous to the nucleobase sequences, or their complements, selected from the group consisting of:
TTC-CTC-CGT-TCG-TTC-G (Seq. Id. No. 1), TAA-GGT-CAT-TCG-TTC-G (Seq. Id. No. 2), TTC-GTC-TGT-TCG-TTC-GA (Seq. Id. No. 3), AAC-TTT-GGA-AGA-GCA (Seq. Id. No. 4), ACG-ACC-AAA-GGA-GC (Seq. Id. No. 5), CCC-CAA-CTT-ACA-GGC (Seq. Id. No. 6), ACT-CTT-ATC-CTT-GTT-CTT (Seq. Id. No. 7), AAG-GGA-CAA-GCA-GT (Seq. Id. No. 8), CAC-TCC-AGT-CTT-CCA-GT (Seq. Id. No. 9), GGA-AAG-CTC-TGT-CTC (Seq. Id. No. 11), GGT-TAC-CCT-ACC-GAC-TT (Seq. Id. No. 12) and TAA-AGG-TTA-CCC-TAC-CG (Seq. Id. No. 13).

Claim 2 reads upon portions comprising sequences which are only 90% homologous-these open language allows for substitutions, insertions, deletions and mismatches. A search query directed to a partially defined sequence often results in a larger volume of prior art that requires additional time and effort to review and analyze, thus adding to the search and examination burden.

Moreover, the sequences are short in length (around 15 residues each). Such short sequences claimed in open language are often more burdensome to search and examine than longer, more fully defined sequences, because such a search query often identifies a larger volume of pertinent art that must be reviewed and analyzed. Sequences claimed in open terms or functional language, such as "complementary to" also present additional search and examination burden as these phrases read upon fragments and sequences which show only partial alignments.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Turning now to the petition, applicants argue that the restriction requirement should be withdrawn in view of MPEP 803.04 and 803.02. These arguments will be addressed in turn.

B. Applicants argue Restriction between the Probes is improper in view of 803.04

Applicants argue that the examination of more than one sequence would not be an undue burden on the examiner on the basis that "...to aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has

decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et. seq* and permit a reasonable number of sequences to be claimed in a single application...normally ten sequences..." See 803.04.

Applicants' reference to the U.S. Patent and Trademark Office policy regarding the examination of patent applications that claim large numbers of nucleotide sequences in the Official Gazette, 1192 O.G. 68 (November 19, 1996) is acknowledged, however, not found persuasive on the basis that this policy regarding the partial waiving of the requirements of 37 CFR 1.141 is such that it will permit a reasonable number of nucleotide sequences to be claimed in a single application. Under the policy, up to 10 independent and distinct nucleotide sequences will be examined in a single application without restriction. The waiver is permissive in nature and not a requirement. The waiver was written in 1996, well before the exponential growth of the nucleic acid databases. The waiver applies only to nucleotide molecules. In contrast, the instant invention does not comprise a nucleotide as it does not contain a sugar phosphate backbone. For these reasons, the present restriction requirement conforms with this policy as it has required that the application be restricted to a single sequence.

C. Applicants argue Restriction between the Probes is improper in view of 803.02

Probes having SEQ ID Nos 1-13 are claimed in the alternative of one claim. Applicants argue that in this situation, the restriction requirement should be withdrawn in view of In re Weber, In re Haas, In re Harnisch and Ex parte Hozumi. Applicants point to MPEP 803.02.

Applicants are correct that when inventions, albeit it species encompassed by a genus of independent or distinct inventions, are recited in the alternative of a claim (Markush-type claim) the examination practice set forth in 803.02 applies.

The search and examination of alternatives in a Markush-type claim will be limited to the elected species and the provisional election of species requirement will take the effect of a restriction requirement when the elected species are rejected under 35 USC 102 or 103. In this application, it was correct for the examiner to limit the search and examination to the elected probe in view of the various rejections made under 35 USC 102(b), 35 USC 102(e) and 35 USC 103(a). Should the rejections on the elected invention be overcome by amendment or argument, the search and examination should then be extended to a second alternative of the Markush claim.

D. Rejoinder Opportunities

Should all claims directed to the elected probe be deemed allowable, combinations which require the allowable probe will be considered for rejoinder. See MPEP 821.04(a).

Moreover, as set forth in detail below, should all claims to the elected product be deemed allowable, rejoinder practice may be appropriate for Group III directed to the process of using the product of Group I.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.
In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

DECISION

For these reasons, the petition under 37 C.F.R. 1.144 to request rejoinder of probes having SEQ ID Nos 1-26 is **DENIED**.

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

The application will be forwarded to the examiner to consider the response filed by applicants on 22 September 2006.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 571-273-8300

George C. Elliott

George Elliott
Director, Technology Center 1600

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DOWELL & DOWELL, P.C.
Suite 309
1215 Jefferson Davis Highway
Arlington VA 22202-3124

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MAY 16 2005

OFFICE OF PETITIONS

Applicant: Lacroix et al.
Appl. No.: 10/436,976
Filing Date: May 14, 2003
Title: IN VITRO GASTROINTESTINAL MODEL SYSTEM AND USES THEREOF
Attorney Docket No.: 14342
Pub. No.: US 2004/0101906 A1
Pub. Date: May 27, 2004

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), filed on July 26, 2004, for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course, unless the patent issues before the application republishes.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

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

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P.O. Box 1450
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PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN VA 22102

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JAN 12 2010

In re Application	:	
Frank Juhre et al.	:	
Application No. 10/437,001	:	DECISION ON PETITION
Filed: May 14, 2003	:	
Attorney Docket No. 092005-0374891	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 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 October 31, 2008, 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 December 1, 2008. A Notice of Abandonment was mailed on September 16, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly the amendment is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

This application is being referred to Technology Center AU 3695 for appropriate action by the Examiner in the normal course of business on the reply received October 29, 2009.

Carl Friedman
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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021105

TSENG, YI WEN
#D306
509 ROOSEVELT BLVD.
FALLS CHURCH VA 22044

MAR 14 2005

In re Application of:
Huang et al.
Serial No.: 10/437,008
Filed: May 14, 2003
Attorney Docket No.: **PO 92110**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on April 7, 2004. 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 Office action mailed on August 29, 2003. A Notice of Abandonment was mailed on April 6, 2004.

Petitioner asserts that a response was timely filed by facsimile transmission on November 14, 2003. To support this assertion, petitioner has submitted 1) a copy of a response which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated November 14, 2003 and 2) a copy of the sending unit's report confirming successful transmission of the response on November 14, 2003.

Pursuant to 37 C.F.R. § 1.8 correspondence will be considered timely if the party who forwarded such correspondence (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

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 April 7, 2004, 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 Jose G. Dees, Special Program Examiner, at (571) 272-1569.

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

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Paper No.

CHUNG-MING SHIH
4331 STEVENS BATTLE LANE
FAIRFAX, VA 22033

COPY MAILED
SEP 14 2005
OFFICE OF PETITIONS

In re Application of	:	
Meng-Cheng et al.	:	DECISION ON PETITION
Application No. 10/437,008	:	
Filed: May 14, 2003	:	
Atty Docket No. PO 92110	:	

This is a decision on the petition filed June 10, 2005, under 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition is **DISMISSED AS MOOT**.

A non-final Office action was mailed in this application on August 29, 2003. No proper reply considered timely filed the application became abandoned effective November 30, 2003. A Notice of Abandonment was mailed on April 6, 2004. In response to applicants' letter filed April 7, 2004, the Office withdrew the holding of abandonment (Copy of Decision mailed March 14, 2005 is enclosed).

Since consideration of the petition under § 1.137(b) is unnecessary, the petition fee is being refunded to the Deposit Account from which it was paid.

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

Telephone inquiries regarding the status of this application should be directed to Technology Center AU 2831 via (571) 272-2800.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

UNITED STATES PATENT AND TRADEMARK OFFICE

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LEONG C. LEI
1867 YGNACIO VALLEY ROAD
PMB# 1008
WALNUT CREEK, CA 94598

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JAN 0 9 2006

OFFICE OF PETITIONS

In re Application of Tang	:	
Application No. 10/437,009	:	Decision on Petition
Filing Date: May 14, 2003	:	
Attorney Docket No. FP9533	:	

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment filed on March 22, 2005.

The petition is **DISMISSED**.

Facts:

The transmittal sheet filed with the application indicated correspondence should be sent to:

SU Po Tang
PO Box 82-144
Taipei, TAIWAN

A filing receipt was mailed to the address of record and was received.

On April 20, 2004, a non-final Office action was mailed to the address of record. As a courtesy, a copy of the papers mailed on April 20, 2004, is attached.

A response was not filed to the Office action. As a result, the application became abandoned as of July 21, 2004.

A Notice of Abandonment was mailed on February 9, 2005.

The instant petition was filed on March 22, 2005. The petition states the Office action was not received, a search of the file jacket has been performed, and the docket records do not indicate receipt of the Office action. The petition is signed by Leong Lei.

A request to change the address to the address listed at the top of this decision was filed and accepted on April 20, 2005.

Analysis:

The petition is vague regarding certain matters. Is petitioner asserting the Office action was not received at the Taiwan address or the California address?

In order for the petition to be granted, the petition must demonstrate the Office action was not received at the Taiwan address, which was the official address of record at the time the Office action was mailed.

Further information is requested.

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

Attached: Copy of papers mailed by Office on April 20, 2004

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MAILED
FROM DIRECTORS OFFICE

MAR 16 2005

TECHNOLOGY CENTER 3600

J. Ralph Johler
16796 W. 74th Place
Arvada, CO 80007

In re Application of
Joseph Ralph Johler
Application No. 10/437,024
Filed: May 14, 2003
For: METHOD AND APPARATUS FOR TRANSMITTING ELECTROMAGNETIC SIGNALS INTO THE EARTH AT FREQUENCIES BELOW 500 KHz FROM A CAPACITOR EMPLACED ON THE SURFACE OF THE EARTH OR RAISED ALOFT IN AND AIRCRAFT

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on September 2, 2004.

The petition is **GRANTED** in view of the following evidence of timely filing :

☐ Postcard receipt dated_____.

☐ USPTO return facsimile receipt dated _____.

☐ Certificate of Mailing/Transmission signed on _____. and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

☒ Originally sent response, filed March 16, 2004, has been found in the application file.

This application is being forwarded to the Supervisory Legal Instruments Examiner for withdrawal of the abandonment and then to the examiner for prompt action.

KJD/rwg: 2/01/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _20100111____

DATE : January 7, 2010

TO SPE OF : ART UNIT 3663

SUBJECT : Request for Certificate of Correction for Appl. No.: 10437057
Patent No.: 7330301

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 – 9D40-C
Palm Location 7580

Certificates of Correction Branch

703-756-1573

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: _____

/Eric Bolda/
Primary Examiner

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

AU 3663 /JACK W KEITH/ SPE 3663

SPE Art Unit

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/437,059	05/14/2003	Kenichi Nagami	236634US2RD DIV	3342

22850 7590 04/29/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
DONAGHUE, LARRY D

ART UNIT	PAPER NUMBER
2454	

NOTIFICATION DATE	DELIVERY MODE
04/29/2010	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@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

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APR 28 2010

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TECHNOLOGY CENTER 2400

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

In re Application of: NAGAMI, Kenichi et. al.
Application No. **10/437,059**
Filed: May 14, 2003
Docket No. 236634US2RD DIV
Title: NETWORK INTERCONNECTION APPARATUS, NETWORK NODE APPARATUS, AND PACKET TRANSFER METHOD FOR HIGH SPEED, LARGE CAPACITY INTER-NETWORK COMMUNICATION

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed on March 25, 2010 under 37 CFR § 1.181(a)(3) requesting that the Examiner consider all references listed on the PTO-1449 filed with the Information Disclosure Statements (IDSs) on August 10, 2005.

The petition is **DISMISSED AS MOOT**.

A review of the file of instant application indicates that on April 09, 2010, the Office considered each of the references listed on the PTO-1449 above mentioned and that applicant was informed of such via a PTO-90C communication. Since each of those references listed on the above mentioned IDS has been already considered, this petition is rendered moot.

Accordingly, the petition is **dismissed as moot.**

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/bp/

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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Date : October 13, 2009

Patent No. :7338273
Inventor(s) :Masashi KONNO, et al.
Issued :March 4, 2008
Title :CUTTER MACHINE

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of 37 CFR 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A request for a patent to be corrected to state the name of the assignee must:

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

B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and

C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.

See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	571-273-8300 ATTN: Office of Petitions
EFS web	uspto.gov/ebc/index.html (must be registered as an e-filer to submit responses) Technical Support 1-866-217-9197

Any inquiry concerning this communication should be directed to Ms. A. Green at (703) 756-1541.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (703) 756-1541

C. Irvin McClelland
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
1940 DUKE STREET,
ALEXANDRIA, VA 22314

/arg

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VOLPE AND KOENIG, P.C.
DEPT. ICC
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

Mail Date: 04/27/2010

Applicant	: Eldad Zeira	: DECISION ON REQUEST FOR
Patent Number	: 7602760	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/437,164	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/13/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1378** 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

RENESSEN LLC
LEGAL DEPARTMENT - PATENTS
#300-SOUTH
3000 LAKESIDE DR
BANNOCKBURN IL 60061

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SEP 2 9 2003

OFFICE OF PETITIONS

In re Application of
Lassner, et al.
Application No. 10/437,169
Filed: May 13, 2003
Attorney Docket No.
REN-00-052-2-Div

DECISION ON PETITION

This is a decision on the paper titled "Response to Notice of Omitted Item(s) in a Nonprovisional Application", filed August 14, 2003, requesting that Figures 25 of the drawings be incorporated by reference.

The petition is **DISMISSED AS INAPPROPRIATE**.

The application was filed on May 13, 2003. However, on June 17, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application", stating that the application had been accorded a filing date of May 13, 2003, and advising applicants that the drawing of Figure 25 described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners admit that Figure 25 was inadvertently omitted. However, petitioners request that Figure 25 be incorporated into the application based upon the incorporation by reference statement contained in Box 18 of the transmittal letter.

MPEP 201.06(c) states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), **without the need for a petition** (emphasis added).

Obviously, in view of the incorporation by reference of parent application no. 09/549,848, the drawing of Figures 25 is not new matter if it was a part of the disclosure of that application.

As petitioners have not included a copy of Figure 25 on petition, petitioners should resubmit the matter included in Figure 25 as a Preliminary Amendment for consideration by the examiner before a first Office action on the merits.

The petition fee of $130 has been charged to Deposit Account No. 05-1100, as authorized.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 13, 2003, including an indication in Office records that 24 figures of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090311A

DATE : March 11, 2009

TO SPE OF : ART UNIT 2627

SUBJECT : Request for Certificate of Correction on Patent No.: 10/437180, PAT 7167436

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

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

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

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

☒ **Approved** **All** changes apply.

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

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

Comments:

SPE: /Wayne Young/ SPE **Art Unit** 2627

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. None

SNELL & WILMER LLP
1920 MAIN STREET
SUITE 1200
IRVINE CA 92614-7230

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JUN 09 2005

OFFICE OF PETITIONS

In re Application of
Shigeo Nakatera et al.
Application No. 10/437,210
Filed: May 13, 2003
Attorney Docket No.: 72478-8000
Title: CATHODE-RAY TUBE, CATHODE-RAY TUBE APPARATUS, IMAGE DISPLAY APPARATUS, AND COIL UNIT

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 March 24, 2005, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue and publication fees and corrected drawings in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed December 23, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting formal drawings, issue or publication fees[2]. Accordingly, the above-identified application became abandoned on March 24, 2005.

A corrected drawing was submitted on February 7, 2005. With the petition, Petitioner has submitted the petition, publication, and issue fees, along with a statement which is being interpreted as the proper statement of unintentional delay.

Petitioner has met all requirements for a grantable petition under 37 C.F.R. §1.137(b). As such, the petition is **GRANTED**. 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

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

2 See MPEP §710.02(e).

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

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FEB 01 2010

In re Application of	:	
Paul Fenton, et al.	:	
Application No. 10/437,223	:	DECISION ON PETITION
Filed: May 13, 2003	:	TO WITHDRAW
Attorney Docket No. 081676-0210 AXYL-0185	:	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 23, 2009.

The request is **NOT APPROVED**.

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

The request cannot be approved because the forwarding correspondence address listed on the withdrawal is not of the first named inventor or a properly intervening assignee under 37 CFR 3.71(c).

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 Johnson at 571-272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Paul Westhaver**
c/o St. Andrews Cross
5 Holly Lane
Dartmouth, Nova Scotia
Canada, B2X3S1

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DAVID B. RITCHIE
THELEN REID & PRIEST LLP
P O BOX 640640
SAN JOSE CA 95164-0640

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OFFICE OF PETITIONS

In re Application of	:	
Chad A. Lindhorst et al	:	
Application No. 10/437,262	:	NOTICE
Filed: May 12, 2003	:	
Attorney Docket No. IMPJ-0042	:	

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

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

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

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (703) 305-8680.

Frances Hicks

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

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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	:	
Henry A. Hill	:	
Application No. 10/437,271	:	ON PETITION
Filed: May 13, 2003	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 26, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit corrected drawings in a timely manner in reply to the Notice of Allowance mailed June 26, 2007, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on September 27, 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 corrected drawings; (2) the petition fee of $1,540; and (3) the required statement of unintentional delay have been received. Accordingly, the corrected drawings are accepted as having been unintentionally delayed.

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

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

The application file is being referred to the Office of Patent Publication.

David Bucci
Petitions Examiner
Office of Petitions

Cc: Chris Bowley
Fish & Richardson P.C.
Citigroup Center
153 East 53rd Street, 52nd Floor
New York, New York 10022-4611

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JACK Q. LEVER, JR.
MCDERMOTT, WILL & EMERY
600 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20005-3096

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OFFICE OF PETITIONS

In re Application of :
Hideo Nakagawa, et al. :
Application No. 10/437,299 : ON PETITION
Filed: May 14, 2003 :
Attorney Docket No.: 60188-349 :

This is a decision on the petition, filed June 30, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 26, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2814 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

BRINKS HOFER GILSON & LIONE
POST OFFICE BOX 10395
CHICAGO IL 60610

In re Application of
Michael Heim, Ljupco Dimitreivski, Frank Robinson and Nayan Jayant Engineer
Application No.10/437,321
Filed: May 13, 2003
Attorney Docket Number: 10541-1404
Title of Invention: INTEGRATED PZEV MODULE

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed March 5, 2004.

The petition is GRANTED.

Petitioner has shown that the non-signing inventor can not be reached or located and diligent effort has been used to locate the inventor. The efforts outlined by petitioner demonstrate diligent effort was used to attempt to locate non-signing inventor Engineer. Specifically rule 47 applicant tried to contact the non-signing inventor via the mail as well as electronic mail. An Internet search for the non-signing inventor proved unsuccessful.

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

Deposit account 06-1500 is being credited with $130.00. The petition fee was inadvertently charged twice.

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
Petitions Attorney
Office of Petitions

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WLADYSLAW BOGDAN
1210 MAJOR STR.
OTTAWA, ON K2C 2S2 CA CANADA

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OFFICE OF PETITIONS

In re Application of	:	
Bogdan, Wladyslaw	:	
Application No. 10/437,335	:	ON PETITION
Filed: May 2, 2003	:	
Title: DIGITAL PHASE DETECTOR WITH EXTENDED RESOLUTION	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 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 an Amendment, Terminal Disclaimer and an Oath/Declaration; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to Technology Center 2800 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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JUN 27 2005

PAULEY PETERSEN & ERICKSON
2800 WEST HIGGINS ROAD
SUITE 365
HOFFMAN ESTATES IL 60195

In re Application of	:	
Janice M. Jenkins	:	
Serial No.: 10/437,336	:	DECISION ON PETITION
Filed: May 13, 2003	:	
For: Implantable Cardiac Arrest Monitor	:	
And Alarm System	:	

This is in response to applicants' petition filed January 18, 2005 to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

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

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

Should there be any questions with regard to this letter please contact Frederick Schmidt by letter addressed to the Director, Technology Center 3700, or by telephone at (571) 272-2975 or by facsimile transmission at (703) 872-9306.

Frederick R. Schmidt

Frederick R. Schmidt, Director
Technology Center 3700

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/437,340	05/13/2003	Michael Cecchi	59140 (49478)	3209

21874 7590 12/01/2004
EDWARDS & ANGELL, LLP
P.O. BOX 55874
BOSTON, MA 02205

EXAMINER
PHAM, MINH CHAU THI

ART UNIT	PAPER NUMBER
1724	

DATE MAILED: 12/01/2004

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

S. C

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Mailed:

DSS
Paper No.

In re Application of Michael Cecchi
Serial No.: 10/437,340
Filed: May 13,2003

DECISION ON PETITION UNDER *37 CFR 1.48(a)*

Title: STERILIZED FILTER AND A METHOD FOR MANUFACTURING THE SAME

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed August 08, 2004 to correct inventorship under 37 CFR 1.48(a) by adding the name of Monica Mezezi to the list of inventors of the instant application.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63; and, (5) providing the written consent of the assignee. However, applicant has not met the requirement of 4) the fee as set forth under 1.17(i).

The request is DENIED.

The file will be forwarded to Publications for issuance of the patent. Inventorship may still be changed by petition until the patent issues or by Certificate of Correction after issuan

DUANE SMITH
SUPERVISORY PATENT EXAMINER

11-29-07

Duane S. Smith
Supervisory Patent Examiner
Art Unit 1724
Technology Center 1700

Edward & Angell, LLP
P.O. Box 55874
Boston, MA 02205

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JAN 21 2004

OFFICE OF THE DIRECTOR
TC 3600

Dennis H. Lambert
7000 View Park Drive
Burke, VA 22015

In re application of
Alan Georgeff
Application No. 10/437,360
Filed: May 13, 2003
For: TWO-PIECE VEHICLE WHEEL

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed May 13, 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(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed May 13, 2003 lacks requirement 2(C), above. In view of this deficiency, the petition is **DISMISSED**.

The applicant, assignee or attorney in addition to stating that a careful search of the prior art has been made, or having good knowledge of the prior art, **must** submit the **most closely** related pieces of prior art. Since "most closely related" is the **best** of the art found, a submission of art is always required, even if the applicant feels that it is not all that related to the invention.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above.

Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

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

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

SNM/cps: 1/15/04

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/437,378	05/13/2003	Jeffrey R. Pollard	200207805-1	5074

22879 7590 05/02/2005

HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER
HEINRICH, SAMUEL M

ART UNIT	PAPER NUMBER
1725	

DATE MAILED: 05/02/2005

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

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5/2/05

In re Application of	:	
Jeffrey R. Pollard	:	NOTICE OF WITHDRAWAL
Serial No. 10/437378	:	FROM ISSUE
Filed: May 13, 2003	:	UNDER 37 CFR 1.313(b)
For: LASER MICROMACHINING &METHODS	:	
OF SAME	:	

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 Tom Dunn at (571) 272-1171.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

J. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS CO 80527-2400

CC: ALLOWED FILES

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1/14/08

Patent No. :6970627
Ser. No. : 10437407
Inventor(s) :Musubu Koishi et al.
Issued : 11/29/05
Title : METHOD AND APPARATUS FOR CORE ALIGNMENT BETWEEN OPTICAL COMPONENTS
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 Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

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

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

A certificate of correction will be issued to correct the remaining errors noted in your request.

Henry Randall
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 Ext. 108

OSHA LIANG LLP
1221 McKinney St.
Houston, Texas 77010

HR

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OSHA LIANG L.L.P.
1221 MCKINNEY STREET
SUITE 2800
HOUSTON, TX 77010

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SEP 26 2008

In re Patent No. 6,970,627	:	
Application No. 10/437,407	:	
Filed: May 13, 2003	:	ON PETITION
Issued: November 29, 2005	:	
Attorney Docket No. 07200.031001	:	

This is a decision on the petition filed March 24, 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**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to Joan Olszewski at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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

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AUG 25 2003

UR
PAPER NO. 3

In re Application of
David L. Winnestaffer
Serial Number: 10/437,471
Filed: May 14, 2003
For: METHODS FOR CLEANING CATALYTIC CONVERTERS

PETITION UNDER M.P.E.P.708.02,V

This is in response to the petition filed, May 14, 2003 requesting that the above-identified application be granted Special Status under section 708.02 (V) of the MPEP and 37 CFR 1.102(c) **(no fee required)**.

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

Accordingly the petition is **GRANTED.**

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Dinsmore & Shohl, LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, OH 45202

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Molecular Imprints, Inc.
Kenneth C. Brooks
P. O. Box 81536
Austin, TX 78708-1536

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JUN 21 2005

OFFICE OF PETITIONS

In re Application of :
Mario J. Meissl, et al. :
Application No. 10/437,476 :
Filed: May 14, 2003 :
Attorney Docket No. P81/MII-41-23 :

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed February 25, 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).

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 11, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of September 29, 2005 accompanies this decision on petition.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed in this case on March 25, 2005. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee(s) Due mailed in this case did not require the submission of a publication fee. Therefore, a Notice of Publication Fee Due is being mailed under separate cover since the nonpublication request has been rescinded. Petitioner should note that payment of the publication fee must be submitted within the period set forth in the Notice to avoid abandonment of the application.

This application is being forwarded to Publishing Division to await a reply to the Notice of Allowance and Fee(s) Due mailed March 25, 2005 and to the Notice of Publication Fee Due mailed June 21, 2005.

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

Marianne E. Jenkins

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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LADAS & PARRY
26 WEST 61ST STREET
NEW YORK NY 10023

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OCT 1 1 2005

OFFICE OF PETITIONS

In re Application of
Brestel et al
Application Number: 10/437,507
Patent: 6,914,668
Attorney Docket Number: U 014603-4
Filing Date: May 14, 2003
Issue Date: July 5, 2005

DECISION ON PETITION

This is a decision on the petition filed September 14, 2005 under 37 CFR 3.81 (b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **Granted**.

Petitioner has submitted a $400.00 petition fee. Pursuant to petitioner's request deposit account 12-0425 is being refunded $270.00. The certificate of correction pursuant 37 CFR 1.20 (a) fee is $100.00 and the processing fee pursuant to 37 CFR 1.17(i) is $130.00. A petition fee is no longer required.

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

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

Charlema R. Grant
Petitions Attorney
Office of Petitions

[1]See 69 Fed. Reg. 29865 (May 26, 2004).

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AKERMAN SENTERFITT
P.O. BOX 3188
WEST PALM BEACH, FL 33402

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JAN 23 2004

OFFICE OF PETITIONS

In re Application of :
C. Glen Wensley, Scott :
Gustafson and Craig R. Nelson : DECISION GRANTING PETITION
Application No. 10/437,546 : UNDER 37 CFR 1.47(a)
Filed: May 13, 2003 :
Title: CARD WITH EMBEDDED IC
AND ELECTROCHEMICAL CELL

This is in response to the "Petition Under 37 CFR 1.47(a)," filed January 5, 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 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JOHN T. WINBURN
100 BOSCH BOULEVARD
NEW BERN NC 28562

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JUN 21 2006

OFFICE OF PETITIONS

In re Application of	:	
Michael ROSENBAUER et al.	:	DECISION ON PETITIONS
Application No. 10/437,548	:	UNDER 37 CFR 1.183 AND
Filed: May 13, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2000P13023WOUS	:	

This is a decision on the petition under 37 CFR 1.183, filed March 20, 2006, requesting waiver of 37 CFR 1.78(a)(3) as that rule operates in conjunction with 37 CFR 1.17(t), and a decision on the petition under 37 CFR 1.78(a)(3), filed April 28, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/EP01/13000, filed November 9, 2001, set forth in the accompanying Application Data Sheet.

The petition under 37 CFR 1.183 is **DISMISSED** as moot in view of the request filed April 28, 2006, withdrawing the petition to waive the surcharge fee requirement of 37 CFR 1.78(a)(3). No fee has been assessed to petitioner's deposit account for the petition under 37 CFR 1.183.

The petition under 37 CFR 1.78(a)(3) is **GRANTED.**

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

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

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

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

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 and 365(c) is accepted as being unintentionally delayed.

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

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

Any inquiries concerning this decision may be directed to David Bucci at (571) 272-7099. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to the examiner of Technology Center Art Unit 3634 for appropriate action on the amendment filed April 28, 2006, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 and 365(c) to the above-noted, prior-filed PCT application.

Brian Hearn
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 21 2006
OFFICE OF PETITIONS

JOHN T. WINBURN
100 BOSCH BOULEVARD
NEW BERN NC 28562

In re Application of	:	
Michael ROSENBAUER et al.	:	DECISION ON PETITIONS
Application No. 10/437,550	:	UNDER 37 CFR 1.183 AND
Filed: May 13, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2000P13024WOUS	:	

This is a decision on the petition under 37 CFR 1.183, filed March 20, 2006, requesting waiver of 37 CFR 1.78(a)(3) as that rule operates in conjunction with 37 CFR 1.17(t), and a decision on the petition under 37 CFR 1.78(a)(3), filed April 28, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/EP01/11902, filed October 15, 2001, set forth in the accompanying Application Data Sheet.

The petition under 37 CFR 1.183 is **DISMISSED** as moot in view of the request filed April 28, 2006, withdrawing the petition to waive the surcharge fee requirement of 37 CFR 1.78(a)(3). No fee has been assessed to petitioner's deposit account for the petition under 37 CFR 1.183.

The petition under 37 CFR 1.78(a)(3) is **GRANTED.**

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

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

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 and 365(c) is accepted as being unintentionally delayed.

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

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

Any inquiries concerning this decision may be directed to David Bucci at (571) 272-7099. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to the examiner of Technology Center Art Unit 1746 for appropriate action on the amendment filed April 28, 2006, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 and 365(c) to the above-noted, prior-filed PCT application.

Brian Hearn
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN NC 28562

In re Application of	:	
Rosenbauer, et al.	:	
Application No. 10/437,550	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 2000P13024WOUS	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed May 18, 2009.

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

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed October 20, 2006. This Office action set a shortened statutory period for reply of three months. Applicants filed an Amendment on March 21, 2007 (made timely by obtaining a two month extension of time and including a Certificate of Mailing dated March 19, 2007). However, by Advisory Action mailed April 20, 2007, the Examiner informed Applicants that the Amendment would not be entered because it failed to place the application in condition for allowance. No further reply having been received, the application became abandoned on March 21, 2007. The Office mailed a Notice of Abandonment on June 29, 2007.

With the instant petition, applicants paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of an RCE.

The application is being forwarded to Group Art Unit 1746 for consideration of the RCE, filed May 18, 2009.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

Mail Date: 04/20/2010

Applicant	: Michael Rosenbauer	: DECISION ON REQUEST FOR
Patent Number	: 7621287	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/437,550	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/13/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1736** 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. 5

AKERMAN SENTERFITT
P.O. BOX 3188
WEST PALM BEACH, FL 33402-3188

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JAN 29 2004

OFFICE OF PETITIONS

In re Application of :
Wensley, et al. : DECISION REFUSING STATUS
Application No. 10/437,559 : UNDER 37 CFR 1.47(a)
Filed: May 13, 2003 :
Atty. Dkt. No.: 7249-5 :
For: POLYIMIDE MATRIX ELECTROLYTE :

This decision is in response to the petition under 37 CFR 1.47(a), filed January 5, 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).

The above-identified application was filed May 13, 2003 without a properly executed oath or declaration in compliance with 37 CFR 1.63. Accordingly, on July 22, 2003, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, *inter alia*, an executed oath or declaration and surcharge.

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 instant petition lacks requirement (2) set forth above. An acceptable oath or declaration for the above-identified application in compliance with 37 CFR 1.63 has not been submitted. The declaration included with the instant petition is not acceptable for it fails to set forth address, residence, and citizenship of the non-signing inventor as per 37 CFR 1.63(a).

Further, the declaration fails to identify the application number in accordance with 37 CFR 1.63(b)(1).

Any renewed petition must be accompanied by a proper oath or declaration in accordance with 37 CFR 1.63.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 872-9306
By hand:	U.S. U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

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APR 0 7 2004

OFFICE OF PETITIONS

In re Application of	:
Wensley, et al.	: DECISION REFUSING STATUS
Application No. 10/437,559	: UNDER 37 CFR 1.47(a)
Filed: May 13, 2003	:
Atty. Dkt. No.: 040699-0127	:
For: POLYIMIDE MATRIX ELECTROLYTE	:

This decision is in response to the renewed petition under 37 CFR 1.47(a), filed March 26, 2004.

The petition is **GRANTED**.

Petitioner has shown that inventor Scott Gustafson has refused to execute the declaration for 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 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 above-identified application will be returned to the Office of Initial Patent Examination for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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SCOTT GUSTAFSON
4105 SUNNY GLENN DRIVE
LAKELAND, FL 33813

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OFFICE OF PETITIONS

In re Application of	:	
Wensley, et al.	:	
Application No.: 10/437,559	:	LETTER
Filed: May 13, 2003	:	
Atty. Dkt. No.: 040699-0127	:	
For: POLYIMIDE MATRIX ELECTROLYTE	:	

Dear Sir:

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

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

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

Telephone inquiries regarding this matter 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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SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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DEC 28 2004

OFFICE OF PETITIONS

In re Application of
Wensley, Gustafson
Application No. 10/437,559
Filed: May 13, 2003
Attorney Dck't. No. n/a

: ON PETITION

This application is before this office due to the petition styled as filed under 37 CFR 1.183 on November 17, 2004, which is being treated by the Office of Petitions solely under 37 CFR 1.181 to clarify the record.

The petition considered under 37 CFR 1.181 is **granted**.

The change of the correspondence address due to receipt on August 30, and November 29, 2004, of documents executed by non signing inventor Gustafson purporting to be a revocation and power of attorney to John J. Halak is vacated. The correspondence address is reinstated to that noted above. The Office action of September 10, 2004, which was mailed to an improperly recognized attorney at an improperly accorded correspondence address is vacated. The action will be remailed to counsel at the correspondence address given above, and will include treatment of the petition under 37 CFR 1.48 filed November 17, 2004. The only counsel of record are those associated with customer No. 22,248. The USPTO sincerely regrets any inconvenience caused to Rule 47 applicant Wensley and his duly appointed representatives.

Counsel John J. Halak is advised that he was improperly recognized in this case, and that he does not, under the circumstances of this case, act in a representative capacity for any inventor named in this application. Even if the declaration signed by Gustafson sole filed August 30, 2004, is treated in a light most favorable to him as an indication that he has joined in this application, Gustafson may not appoint his own counsel unless and until he has obtained the permission of the other named inventor(s) herein to do so, and the record fails to indicate Gustafson has obtained such permission . But see MPEP 402.10. Furthermore, Gustafson is not permitted to change the correspondence address of this application, and is advised to refrain from any further attempts to improperly interfere with the orderly prosecution of this application.

The Technology Center is reminded that any further correspondence filed by or on behalf of non signing inventor Gustafson is only to be placed in the file. See MPEP 409.03(j).

As to the petition filed under 37 CFR 1.183 filed by Rule 47 applicant to excuse the lack of the non signing inventor's signature on the supplemental declaration occasioned by the petition under 37 CFR 1.48, no such petition is necessary. 37 CFR 1.48(a)(3), indicates that a declaration signed by the actual inventors as required by 37 CFR 1.63 must be filed, but, "as permitted by §§ 1.42, 1.43 or § 1.47" the lack of a named inventor's signature is excusable. Since Rule 47 status has been accorded to this application due to the recalcitrance of Gustafson, this means that the lack of his signature is excused on the original and all subsequently filed declarations under 37 CFR 1.63.

As a courtesy, a copy of this decision is being mailed to counsel Halak. The USPTO will not undertake dual correspondence.

Messrs. Gustafson and Halak are placed on notice that the Office considers the filing of a petition or other paper, such as an *ultra vires* change of correspondence address, on behalf of a party having no standing in an application, and not otherwise authorized by the rules of practice, to be a petition or paper presented for an improper purpose (37 CFR 10.18). For example, the filing of a paper on behalf of a party in situations not authorized by the rules of practice delays the examination and processing of applications, which may cause harm to the general public if it results in the Office missing any one of the examination time frames specified in 35 U.S.C. §§ 154(b)(1)(A) or 154(b)(1)(B). Therefore, the Office may refer any further third party petitions or papers in this or any other application to the Office of Enrollment and Discipline for appropriate action.

This application is being brought to the attention of the Technology Center for further action consistent with this decision.

Telephone inquiries relative to this decision only should be directed to the undersigned at (703) 305-1820.

Brian Hearn

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

cc:
John J. Halak
6717 Ashley Court, Suite 101
Sarasota FL 34241-9696

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

MARK L. YASKANIN
1560 BROADWAY, SUITE 1200
DENVER, CO 80202-5141

COPY MAILED

NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of
Stephen Ritland
Application No. 10/437,560
Filed: May 13, 2003
Attorney Docket No. 4510-4-2

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 3732.

Irvin Dingle
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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/437,571	05/14/2003	Christian H. Post	200301740-3	6709

22879 7590 03/05/2009
HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER
TRIEU, VAN THANH

ART UNIT	PAPER NUMBER
2612	

NOTIFICATION DATE	DELIVERY MODE
03/05/2009	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):

JERRY.SHORMA@HP.COM
mkraft@hp.com
ipa.mail@hp.com

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090302

DATE : March 3, 2009

TO SPE OF : ART UNIT 2612

SUBJECT : Request for Certificate of Correction on Patent No.: 7,116,241

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

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

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

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

☒ **Approved** **All** changes apply.

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

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

Comments:

SPE: Daniel Wu **Art Unit** 2612

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

ATTORNEY DOCKET NUMBER: 200301740-3

IN RE APPLICATION OF: U.S. Patent No. 7,116,241

USPTO CONFIRMATION CODE: 6709

APPLICATION NO.: 10/437,571

FILED: May 14, 2003

EXAMINER: Van T. Trieu

GROUP ART UNIT: 2612

Approved by
/Van T. Trieu/
Primary Examiner
02 March 2009

FOR: REMOVABLE MEMORY CARTRIDGE SYSTEM FOR USE WITH A SERVER OR OTHER PROCESSOR-BASED DEVICE

37 CFR 1.322 & 37 CFR 1.323 REQUEST FOR CERTIFICATE OF CORRECTION

HONORABLE COMMISSIONER OF PATENTS & TRADEMARKS

Sir:

The following is a request for a certificate of correction in Serial Number 10/437,571, now Patent Number 7,116,241.

A certificate of correction under 35 USC 254 is respectfully requested in the above-identified patent.

☐ All errors were the fault of the USPTO, no fee required. In the event that a further fee is required, please charge the amount to Deposit Account No. 082025.

☐ All errors were the fault of the applicant and, accordingly, please charge **$100.00** to our Deposit Account No. 082025. In the event that a further fee is required, please charge the amount to the same Deposit Account.

☒ The errors were the fault of both the applicant and USPTO and, accordingly, please charge **$100.00** to our Deposit Account No. 082025. In the event that a further fee is required, please charge the amount to the same Deposit Account.

The exact locations where the errors appear in the patent and patent application are as follows:

On the face page, in field (56), under "U.S. Patent Documents", in column 2, line 13, above "6,167,251 A 12/2000 Segal et al. ..... 455/406" delete "6,180,100 B1 8/2000 McVey et al. ..... 358/1.16".
(List of references cited by applicant and considered by examiner dated Jun. 23, 2006, sheet 1 of 1, under "U.S. Patent Documents", entry 5)

In column 16, line 61, in Claim 1, after "chassis;" delete "and".
(Amendment to claims filed on May 30, 2006, page 2, in Claim 1, line 3)

In column 16, line 62, in Claim 1, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 2, in Claim 1, line 4)

In column 16, line 64, in Claim 1, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 2, in Claim 1, line 5)

In column 16, line 65, in Claim 1, delete "device." and insert - - device; and a plurality of removable memory modules that are securable within each of the plurality of memory cartridges. - -, therefor.
(Amendment to claims filed on May 30, 2006, page 2, in Claim 1, lines 6-8)

In column 16, line 67, in Claim 2, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 2, in Claim 2, line 2)

In column 17, line 8, in Claim 3, after "remove a" delete "non-optical".
(Amendment to claims filed on May 30, 2006, page 2, in Claim 3, line 3)

In column 17, line 11, in Claim 4, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 2, in Claim 4, line 2)

In column 17, lines 28-29, in Claim 9, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 3, in Claim 11, line 3)

In column 17, line 30, in Claim 9, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 3, in Claim 11, line 4)

In column 17, line 35, in Claim 10, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 3, in Claim 30, line 3)

In column 17, line 48, in Claim 11, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 4, in Claim 35, line 1)

In column 17, line 57, in Claim 12, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 4, in Claim 36, line 2)

In column 17, line 60, in Claim 12, delete "non-optical" before "memory".
(Amendment to claims filed on May 30, 2006, page 4, in Claim 36, line 4)

In column 17, line 64, in Claim 13, delete "the assembly" and insert - - The assembly - -, therefor.
(Amendment to claims filed on May 30, 2006, page 4, in Claim 37, line 1)

In column 18, line 6, in Claim 15, after "chassis;" delete "and".
(Amendment to claims filed on May 30, 2006, page 4, in Claim 129, line 3)

In column 18, lines 15-16, in Claim 15, delete "to a memory" before "cartridge".
(Amendment to claims filed on May 30, 2006, page 5, in Claim 129, line 6)

In column 18, line 58, in Claim 21, after "within" insert - - each of - -.
(Amendment to claims filed on May 30, 2006, page 6, in Claim 136, line 3)

The requested corrections are attached on Form PTO 1050.

Respectfully Submitted

12/11/2008
DATE

Name: Steven L. Webb
Registration No.: 44,395

Attorney/Agent of Record

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

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,116,241

APPLICATION NO. : 10/437,571

ISSUE DATE : Oct. 03, 2006

INVENTOR(S) : Christian H. Post, et al.

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

On the face page, in field (56), under "U.S. Patent Documents", in column 2, line 13, above "6,167,251 A 12/2000 Segal et al. ..... 455/406" delete "6,180,100 B1 8/2000 McVey et al. ..... 358/1.16".

In column 16, line 61, in Claim 1, after "chassis;" delete "and".

In column 16, line 62, in Claim 1, delete "non-optical" before "memory".

In column 16, line 64, in Claim 1, delete "non-optical" before "memory".

In column 16, line 65, in Claim 1, delete "device." and insert - - device; and a plurality of removable memory modules that are securable within each of the plurality of memory cartridges. - -, therefor.

In column 16, line 67, in Claim 2, delete "non-optical" before "memory".

In column 17, line 8, in Claim 3, after "remove a" delete "non-optical".

In column 17, line 11, in Claim 4, delete "non-optical" before "memory".

MAILING ADDRESS OF SENDER (Please do not use customer number below):

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

This collection of information is required by 37 CFR 1.322, and 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patent, 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.

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,116,241

APPLICATION NO. : 10/437,571

ISSUE DATE : Oct. 03, 2006

INVENTOR(S) : Christian H. Post, et al.

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

In column 17, lines 28-29, in Claim 9, delete "non-optical" before "memory".

In column 17, line 30, in Claim 9, delete "non-optical" before "memory".

In column 17, line 35, in Claim 10, delete "non-optical" before "memory".

In column 17, line 48, in Claim 11, delete "non-optical" before "memory".

In column 17, line 57, in Claim 12, delete "non-optical" before "memory".

In column 17, line 60, in Claim 12, delete "non-optical" before "memory".

In column 17, line 64, in Claim 13, delete "the assembly" and insert - - The assembly - -, therefor.

In column 18, line 6, in Claim 15, after "chassis;" delete "and".

In column 18, lines 15-16, in Claim 15, delete "to a memory" before "cartridge".

In column 18, line 58, in Claim 21, after "within" insert - - each of - -.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

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

This collection of information is required by 37 CFR 1.322, and 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Attention Certificate of Corrections Branch, Commissioner for Patent, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

Stephen G. Rudisill
Jenkins & Gilchrist, PC
1445 Ross Avenue, Suite 3200
Dallas, TX 75202-2799

COPY MAILED

OCT 06 2003

OFFICE OF PETITIONS

In re Application of
Derek Small and John Lunn
Application No. 10/437,616
Reissue of Patent No. 6,232,852
Original Issue Date: May 15, 2001
Filing Date: May 14, 2003
Attorney Docket No. 47176-00681USPR

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(b)

This in response to the petition under 37 CFR 1.47(b), filed August 29, 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(b)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

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

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
(2) an acceptable oath or declaration;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;
(5) proof of proprietary interest; and
(6) proof of irreparable damage.

Applicant lacks item (1), (2), and (6) set forth above.

As to item (1), the record is ambiguous as to the identity of the individual who spoke with Mr. Small on August 12, 2003. Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted. Petitioner should note that, whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to item (2), the 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, or Treasurer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by

an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP Section 324. Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

The declaration fails to state the citizenship of the non-signing inventors. Petitioner should note that this information might be obtained by reviewing the declaration filed in the prior application- the instant application is a reissue application.

Petitioner should ensure that the new declaration states the correct address to which all future correspondence should be mailed since it will supercede any previously filed correspondence.

As to item (6), Rule 47 applicant failed to provide proof of irreparable damage (see MPEP 409.03(g)). A statement by Rule 47 applicant that the filing is necessary to preserve the rights of the parties would be sufficient.

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

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

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

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

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
www.uspto.gov

Paper No. 9

Stephen G. Rudisill
Jenkins & Gilchrist, PC
1445 Ross Avenue, Suite 3200
Dallas, TX 75202-2799

COPY MAILED

FEB 0 9 2004

OFFICE OF PETITIONS

In re Application of Derek Small and John Lunn Application No. 10/437,616 Reissue of Patent No. 6,232,852 Original Issue Date: May 15, 2001 Filing Date: May 14, 2003 Attorney Docket No. 47176-00681USPR	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed January 20, 2004.

The petition is **granted**.

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

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing 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 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
www.uspto.gov

Paper No. 10

Derek J. Small
149 Spiller Hill Rd.
Raymond, ME 04071

COPY MAILED

FEB 0 9 2004

OFFICE OF PETITIONS

In re Application of :
Derek Small and John Lunn :
Application No. 10/437,616 :
Reissue of Patent No. 6,232,852 :
Original Issue Date: May 15, 2001 :
Filing Date: May 14, 2003 :
Attorney Docket No. 47176-00681USPR :

Letter

Dear Mr. Small:

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(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost 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: Stephen G. Rudisill
Jenkins & Gilchrist, PC
1445 Ross Avenue, Suite 3200
Dallas, TX 75202-2799

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

John A. Lunn
53 Brook Rd.
Portland, ME 04103

COPY MAILED

FEB 0 9 2004

OFFICE OF PETITIONS

Letter

In re Application of :
Derek Small and John Lunn :
Application No. 10/437,616 :
Reissue of Patent No. 6,232,852 :
Original Issue Date: May 15, 2001 :
Filing Date: May 14, 2003 :
Attorney Docket No. 47176-00681USPR :

Dear Mr. Lunn:

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(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost 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: Stephen G. Rudisill
Jenkins & Gilchrist, PC
1445 Ross Avenue, Suite 3200
Dallas, TX 75202-2799

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

KATHLEEN R. TERRY
13840 JOHNSON ST., N.E.
HAM LAKE, MN 55304

COPY MAILED

JUL 18 2007

OFFICE OF PETITIONS

In re Application of :
John A. St. Cyr et al. :
Application No. 10/437,621 : ON PETITION
Filed: May 14, 2003 :
Attorney Docket No. BP.018US1 :

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

The petition is **GRANTED**.

A non-Final Office Action was mailed October 6, 2004. A response was due not later than January 6, 2005. A response in the form of an amendment was filed March 14, 2005. However, on March 28, 2005 the applicant was advised that the amendment filed was non-compliant under 37 CFR 1.121. The time for response was one month from the mailing of the March 28, 2005 Notice. Responses filed July 26, 2005 and November 21, 2005 were filed after the set time for reply and thus the application became abandoned April 28, 2005 and accordingly, a Notice of Abandonment was mailed February 5, 2007.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was

unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

A supplemental amendment is submitted with the petition to revive.

This matter is being referred to Technology Center 1616 for processing of the amendment filed February 12, 2007.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLE INC./BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 04/21/2010

Applicant	: Mike Smith	: DECISION ON REQUEST FOR
Patent Number	: 7607000	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/437,645	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/13/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **818** 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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Jennifer D. Adamson
Shell Oil Company
Legal - Intellectual Property
P.O. Box 2463
Houston TX 77252-2463

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FEB 0 4 2008

OFFICE OF PETITIONS

In re Application of

Heinis, et al. :

Application No. 10/437,665

: DECISION ON PETITION

Filed: May 14, 2003

:

Attorney Docket No. TS-1006US

This is a decision on the petition under 37 CFR 1.137(b), filed August 13, 2007, above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a timely Appeal Brief after the filing of a Notice of Appeal on November 30, 2006. Accordingly, the application became abandoned on January 31, 2007. A Notice of Abandonment was mailed July 26, 2007.

The appeal brief filed August 13, 2007, is noted.

The application is being forwarded to Technology Center 1700, GAU 1711 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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Koestner Bertani LLP
18662 MacArthur Boulevard
Suite 400
Irvine, CA 92612

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JUN 21 2005

OFFICE OF PETITIONS

In re Application of
Brian Quayle
Application No. 10/437,679
Filed: May 13, 2003
Attorney Docket No. 1023.P009 US

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed April 7, 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).

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 September 17, 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, was mailed to applicant on April 28, 2005.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed in this case on January 13, 2005. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee(s) Due mailed in this case did not require the submission of a publication fee. However, applicant provided the $300 publication fee on April 7, 2005.

This application is being forwarded to Publishing Division to be processed into a patent.

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

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

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JUN 17 2009

OFFICE OF PETITIONS

KOESTNER BERTANI LLP
2192 Martin St.
Suite 150
Irvine, CA 92612

In re Patent No. 6,942,182	:	
Issue Date: September 13, 2005	:	
Application No. 10/437,679	:	NOTICE
Filed: May 13, 2003	:	
Attorney Docket No.: SAI.P009 US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 7

R. SCOTT CARR
28046 VIA DE COSTA
SAN JUAN CAPISTRANO, CA 92675

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OCT 29 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
R. Scott Carr :
Application No. 10/437,696 :
Filed: May 14, 2003 :
Attorney Docket No. N/A :

This is a decision on the petition under 37 CFR 1.137(b), filed October 4, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers mailed July 2, 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 3, 2003.

The Change of Correspondence Address has been accepted and recorded.

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
Alexandria, VA 22313-1450
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AUG 30 2004

In re Application of	:	
Richard R. Nagel	:	DECISION ON PETITION
Filed: 10/437,703	:	TO MAKE SPECIAL
For: EASY ACCESS CREDIT CARD	:	
HOLDER	:	

Applicant's petition, filed July 14, 2003, seeks to have this application made special based upon applicant's age. The petition is DISMISSED.

A petition to make special based upon applicant's age requires evidence in support thereof such as a copy of a birth certificate, or a verified statement of applicant's age. A verified statement is either an affidavit under oath before a Notary Public, or a declaration which concludes with the following statement:

> "The undersigned declares that all statements made herein of his or her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon."

The instant petition lacks the required evidentiary support. Applicant may renew the petition by filing evidence to support the allegation of age.

PETITION DISMISSED.

E. Rollins-Cross, Director
Technology Center 3700

Richard R. Nagel
15750 Vista
Lombard, IL 60148

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ALEXANDRIA, VA 22313-1450
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NOV 26 2004

In re Application of	:	
Richard R. Nagel	:	
Serial No. 10/437,703	:	DECISION ON PETITION
Filed: July 14, 2003	:	TO MAKE SPECIAL
For: EASY ACCESS CREDIT CARD	:	
HOLDER	:	

Applicant's renewed petition, filed September 14, 2004, requests that this application be rendered special for examination in that applicant is over sixty-five (65) years of age.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(IV) of the Manual of Patent Examining Procedure (MPEP).

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Richard R. Nagel
15750 Vista
Lombard, IL 60148

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MARK A. LITMAN & ASSOCIATES, P.A.
YORK BUSINESS CENTER
SUITE 205
3209 WEST 76TH STREET
EDINA, MN 55435

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OFFICE OF PETITIONS

In re Application of	:	
Roger M. Snow	:	
Application No. 10/437,726	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. PA0826.AP.US	:	

This is a decision in response to the petition under 37 CFR 1.137(b), filed June 2, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before October 28, 2004. A Notice of Abandonment was mailed on December 2, 2004.

The present petition includes, *inter alia*, a Request for Continued Examination (RCE). Petitioner explains that the RCE was inadvertently not filed. However, in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply under 37 CFR 1.137(b) must be the payment of the issue fee or any outstanding balance thereof. Petitioner indicates that the assignee is a large entity corporation. Accordingly, the issue fee payment of $1,400 is being charged to counsel's deposit account as authorized.

The application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. However, if the above-identified application is again allowed, petitioner may request that the issue fee paid on June 2, 2006, be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.

The application file is being forwarded to Technology Center AU 3712 for further processing of the request for continued examination under 37 CFR 1.114 filed June 2, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
Wang et al.	:	
Application No. 10/437,732	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 018512-007410US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 5, 2005, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed December 30, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on March 31, 2005.

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

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $510.00 extension of time fee submitted with the petition on July 5, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

This matter is being referred to Technology Center 1600 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 8/9/05

2 Serial/Patent # 10437732

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
✓	Extension of Time	EOT	7/5/05	$ 510.00
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 510.00

8 TO BE REFUNDED BY:

	Treasury Check
✓	Credit Deposit A/C #:

9 20--1430

10 REASON:

	Overpayment
	Duplicate Payment
✓	No Fee Due (Explanation):

Extension wasn't filed timely → unnecessary

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Liana Chase TITLE: Pets. Examiner

SIGNATURE: Liana Chase PHONE: 272-3206

OFFICE: Petitions

****

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APPROVED: Alicia Kill DATE: 8/10/05

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

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Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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Commissioner for Patents
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Alexandria, VA 22313-1450
www.uspto.gov

JAN 27 2005

Robert Samuel Smith
1263 EMORY ST.
San Jose CA 95126

In re Application of	:	
Robert Samuel Smith	:	
Serial No.: 10/437,739	:	DECISION ON PETITION
Filed: May 14, 2003	:	
For: Holistic Exercise Device	:	

This is in response to applicants' petition filed December 8, 2004 to make the above-identified application special under the provisions of 37 CFR 1.102(c), based applicant's age.

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

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

Should there be any questions with regard to this letter please contact Esther Kepplinger by letter addressed to the Director, Technology Center 3700, P.O. Box 1450 Alexandria, VA 22313-1450 or by telephone at (571) 272-2975 or by facsimile transmission at (571) 273-0275.

Esther M Kepplinger

Esther M. Kepplinger
Director,
Technology Center 3700

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)
6,703,514	2004-03-09	10/437,768	2003-05-13	12253/10

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

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

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

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

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

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

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

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 K. Levy/	Date (YYYY-MM-DD)	2008-04-15
Name	Michael K. Levy	Registration Number	40699

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. 6703514
Issue Date: March 9,2004
Application No. 10437768
Filed: May 13,2003
Attorney Docket No. 12253/10

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

This is a decision on the electronic petition, filed April 15,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 15,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04/29/06

TO SPE OF : ART UNIT 3634

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/437773 Patent No.: 7021360

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. 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: _____

Blair M. Johnson
Primary Examiner

SPE

3634.
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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222 LAKEVIEW AVENUE, STE. 400
WEST PALM BEACH, FL 33402-3188

Paper No. 7

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OFFICE OF PETITIONS

In re Application of:
C. Glen Wensley, Scott Gustafson,
Craig R. Nelson and Robert W. Singleton
Application No. 10/437,778
Filed: May 13, 2003
Title of Invention: POLYMIDE BASED ELECTROLYTE AND IMPROVED BATTERIES THEREFROM

DECISION REFUSING STATUS UNDER 37 CFR 1.47

This is in response to the Request for Petition of Co-inventors C. Glen Wensley, Craig R. Nelson and Robert W. Singleton to Prosecute Application in which Other Co-inventor Scott Gustafson Refuses to Sign Application under 37 CFR 1.47(a), filed January 7, 2004. The request for a four (4) month extension-of-time is hereby granted.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)"; should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor, and be addressed to Petitions Attorney Derek L. Woods. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on May 13, 2003, without, *inter alia*, an executed oath or declaration. This Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice") on July 25, 2003, requiring, *inter alia*, a properly signed oath or declaration and a late filing fee, oath or declaration and surcharge.

In response to the Notice, Applicant files the instant Declaration and Petition. A review of the Declaration and Petition reveal that the neither the citizenship, residence (city/state) nor the post office address have been provided for the nonsigning inventor in the oath/Declaration. While it is noted the the copy of the deposition filed with the instant petition contain the residence of the nonsigning inventor, the citizenship of the nonsigning inventor has not been provided.

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

As to item (2), Applicant has failed to provide an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116. Applicant must provide an oath or declaration with the citizenship of the nonsigning inventor. *See*, 37 CFR 1.63(c)(1). A properly executed oath or declaration is required.

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

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

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

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

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

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JUN 29 2004

OFFICE OF PETITIONS

RICHARD C. PEET
3000 K STREET, N.W.
WASHINGTON, DC 20007

In re Application of:
C. Glen Wensley, Scott Gustafson,
Craig R. Nelson and Robert W. Singleton
Application No. 10/437,778
Filed: May 13, 2003
Title of Invention: POLYMIDE MATRIX ELECTROLYTE AND IMPROVED BATTERIES THEREFROM

DECISION GRANTING STATUS UNDER 37 CFR 1.47

This is in response to a Request for Reconsideration of Petition Under 37 CFR 1.47(a), filed June 7, 2004, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

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

Petitioner has shown that the non-signing inventor, Scott Gustafson, refuses to join in the application.

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

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

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

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MR. SCOTT GUSTAFSON
C/O MICHAEL E. BOUTZOUKAS, ESQ.
GOLD, RESNICK & FICARROTTA, P.A.
704 W. BAY STREET
TAMPA, FL 33606-2706

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JUN 2 9 2004
OFFICE OF PETITIONS

In re Application of:
C. Glen Wensley, Scott Gustafson,
Craig R. Nelson and Robert W. Singleton
Application No. 10/437,778
Filed: May 13, 2003
Title of Invention: POLYMIDE MATRIX ELECTROLYTE AND IMPROVED BATTERIES THEREFROM

LETTER

Dear Mr. Gustafson:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0014. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Derek L. Woods
Petitions Attorney
Office of Petitions

cc: RICHARD C. PEET
3000 K STREET, N.W.
WASHINGTON, DC 20007

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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AUG 3 1 2007

OFFICE OF PETITIONS

In re Application of :

Gaetano Cimo et al. :
Application No. 10/437,782 : DECISION ON PETITION
Filed: May 14, 2003 : TO WITHDRAW
Attorney Docket No. CCORP.001A : 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 9, 2007.

The request is **NOT APPROVED**.

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

The request cannot be approved because no reasons for withdrawal have been provided. The Office cannot, at this time, determine whether practitioner's request is one of the mandatory or permissive reasons enumerated in 37 CFR 10.40. Any subsequent requests must include reasons for withdrawal. Please note that there is a space provided for on PTO/SB/83 (Request to Withdraw as Attorney or Agent) to supply practitioner's reasons.

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: **GAETANO CIMO**
25292 MONTE VERDE DRIVE
LAGUNA NIGUEL, CA 92677

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/437,845	05/14/2003	Dana A. Jacobsen	10018492-1	3127

7590 04/18/2008
CATHERINE ANNE WHEALY
P.O. BOX 220
TOLAR, TX 76476

EXAMINER
KAU, STEVEN Y

ART UNIT	PAPER NUMBER
2625	

MAIL DATE	DELIVERY MODE
04/18/2008	PAPER

DECISION GRANTING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is granted.

The express abandonment is recognized. Any previously paid search fee and excess claims fee are hereby refunded.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Nimi Farmer

Patent Publication Branch
Office of Data Management

Adjustment date: 04/23/2008 DTERRY
05/16/2003 SZENDIEI 00000015 082025 10437845
02 FC:1201 176.00 CR
03 FC:1202 792.00 CR

FORM PET651G (Rev. 08/07)

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IPSG, P.C.
P.O. BOX 700640
SAN JOSE, CA 95170-0640

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Harrison Choi :
Application No. 10/437,854 :
Filed: May 13, 2003 :
Attorney Docket No. 60349-307002 :

This is a decision on the petition filed, October 17, 2005 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed January 7, 2005, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 8, 2005.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on October 17, 2005.

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

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

This matter is being referred to Technology Center AU 3673 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc:

Patrick W. Rasche
Armstrong Reasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740

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NIXON PEABODY LLP
401 9TH STREET, N.W.
WASHINGTON, DC 20004

Mail Date: 04/27/2010

Applicant	: Paul L. Master	: DECISION ON REQUEST FOR
Patent Number	: 7660984	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/437,855	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/13/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1084** 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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BSH HOME APPLIANCES CORP.
100 BOSCH BOULEVARD
NEW BERN, NC 28562

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MAY 3 1 2007

OFFICE OF PETITIONS

In re Patent No. 6,868,977	: DECISION GRANTING PETITION
Issue Date: March 22, 2005	: UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/437,865	: REQUEST FOR CERTIFICATE OF
Filed: May 13, 2003	: CORRECTION
Attorney Docket No. 2000P13022WOUS	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 31, 2007, seeking to add a claim for priority under 35 U.S.C. §§ 120 and 365(c) to international Application No. PCT/EP01/12999, filed November 9, 2001, by way of a certificate of correction.

The petition is **granted**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed PCT application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed May 13, 2003. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to the above-noted, prior-filed PCT application after issuance of the application into a patent. *See* MPEP 1481.

A petition for acceptance of a claim for late priority 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, 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.

As the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

It is noted that, prior to the granting of the present petition under 37 CFR 1.78(a)(3), the Certificates of Correction Branch issued a certificate of correction. Accordingly, no further action in this case is deemed necessary.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/437,865	05/13/2003	3634	1180	2000P13022WOUS	12	2

CONFIRMATION NO. 5033

CORRECTED FILING RECEIPT

OC000000024150714

46726
BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

Date Mailed: 05/31/2007

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)

Michael Rosenbauer, Reimlingen, GERMANY;
Heinz Heissler, Dillingen, GERMANY;
Ulrich Deiss, Sontheim, GERMANY;
Gerhard Fetzer, Gundelfingen, GERMANY;

Assignment For Published Patent Application

BSH Bosch und Siemens Hausgerate GmbH, Munich, GERMANY

Power of Attorney: The patent practitioners associated with Customer Number **000046726**.

Domestic Priority data as claimed by applicant

This application is a CON of PCT/EP01/12999 11/09/2001

Foreign Applications

GERMANY 10056487.9 11/15/2000

If Required, Foreign Filing License Granted: 07/16/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/437,865

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

ADAPTER FOR A DISH BASKET OF A DISHWASHER

Preliminary Class

211

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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OFFICE OF PETITIONS

STEPTOE & JOHNSON, LLP
2121 AVENUE OF THE STARS
SUITE 2800
LOS ANGELES CA 90067

In re Application of	:	
Robert A. LUCIANO Jr. et al.	:	
Application No. 10/437,867	:	DECISION ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. 83336.1597	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue fee on or before April 16, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed January 16, 2007, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on January 17, 2007. A Notice of Abandonment was mailed on May 15, 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 payment of the issue fee $700; (2) the petition fee of 750; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment 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 Publishing Division for processing into a patent.

Denise Pothier
Petitions Examiner
Office of Petitions

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

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FEB 27 2007

OFFICE OF PETITIONS

In re Application of Deem et al. :
Application No. 10/437,882 : Decision on Petition
Filing Date: May 13, 2003 :
Attorney Docket No. 020979-003600US :

This is a decision on the petition under 37 CFR 1.137(b), filed October 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 February 24, 2006, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on May 25, 2006.

The instant petition requests revival of the application.

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

The Notice of Appeal filed October 4, 2006, has been entered and made of record. Accordingly, the 2-month period for filing the appeal brief, in triplicate, accompanied by the fee required by law, runs from the date of this decision.

Technology Center Art Unit 3743 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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Paper No.

NIXON & VANDERHYE, PC
1100 NORTH GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

MAR 11 2005

In re Application of:
Masakazu Yamamoto
Serial No.: 10/437888
Filed: May 15, 2003
Attorney Docket No.: **1035-449**

NOTICE OF WITHDRAWAL
FROM ISSUE
UNDER 37 CFR § 1.313

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

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed July 16, 2004, are hereby vacated.

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

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

Telephone inquires should be directed to Paula Bradley at (571) 272-2800 ext 33.

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

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

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ARENT FOX KINTNER PLOTKIN &
KAHN, PLLC
Suite 400
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339

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OFFICE OF PETITIONS

In re Patent No. 6,903,630	:	
Miura et al.	:	
Issue Date: June 7, 2005	:	DECISION ON
Application No. 10/437,908	:	PETITION
Filed: May 15, 2003	:	
Atty Docket No. 025720-00008	:	
	:	

This is decision on the "PETITION TO ACCEPT REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. 1.183" filed June 30, 2005, requesting waiver of the Requirements of 37 CFR 3.81." 2001. Waiver is requested so that a Certificate of Correction can be granted to correctly identify the assignees on the front face of the patent.

The petition is **GRANTED**.

Petitioner states that assignee, "Fujitsu Limited Kawasaki (JP)" was omitted through error without deceptive intent from form PTOL-85B, and requests that a Certificate of Correction be issued to add this second assignee. Petitioner submits a "Certificate of Correction" for this purpose.

Both petitioner's evidence and Office records show that the assignment of the above-identified application to Fujitsu Limited Kawasaki was submitted for recording in the Office in May of 2003 (Reel/Frame 014080/0350). This was prior to payment of the Issue Fee on March 24, 2005.

Payment of the required $130 processing fee and the required $100 certificate of correction fee is acknowledged.

The required fee for this request is a $130 processing fee, not a $400 petition fee. The overpayment of $270 charged to your Deposit Account is being refunded.

The file is being forwarded to the Certificates of Correction Branch for Issuance of the requested Certificate of Correction.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

LAWRENCE M. LAVIN, JR.
MONSANTO COMPANY
PATENT DEPARTMENT, E2NA
800 N. LINDBERGH BOULEVARD
ST LOUIS, MI 63167

COPY MAILED

NOV 0 7 2003

OFFICE OF PETITIONS

In re Application of	:	
Thomas J. La Rosa, et al.	:	DECISION GRANTING
Application No. 10/437,963	:	PETITION UNDER
Filed: May 14, 2003	:	37 CFR 1.137(b)
Attorney Docket No. 38-21(53221)B	:	

This is a decision on the petition, filed October 22, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Thomas E. Holsten appearing on the petition 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. However, if Mr. Holsten 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 is **GRANTED**.

The record discloses that, on May 14, 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 multilaterial international agreement, that requires publication at eighteen months after filing."

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on July 18, 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.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Technology Center Art Unit 1638 for examination in due course.

Sherry D. Brinkley

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

cc: Thomas E. Holsten
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004-1206

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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MONSANTO COMPANY (A&P)
800 N. LINDBERGH BOULEVARD
MAILZONE E2NA
ST. LOUIS MO 63167

COPY MAILED

JUN 1 0 2008

OFFICE OF PETITIONS

In re Application of	:	
LA ROSA et al.	:	
Application No. 10/437,963	:	DECISION ON PETITION
Filed: 05/14/2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 38-21(53221)B	:	

This is a decision on the petitions under 37 CFR 1.78(a)(3), filed March 28, 2008, to accept an unintentionally delayed claim under 35 U.S.C. 120 for benefit of priority to the prior-filed application set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT.**

In the present petition, petitioners explain:

> On May 14, 2003, the above-captioned U.S. Application (the" '963 Application") was filed with a Preliminary Amendment that amended the paragraph claiming priority to, and incorporating by reference, certain applications. A copy of the amended priority claim paragraph in the Preliminary Amendment is attached hereto as Exhibit 1. Subsequently, it was determined that the prosecution status of U.S. Application No. 09/837,604 (the "604 Application"), which the present Application claims priority to, has changed. Thus, with this petition, Applicants request to further amend the priority claim.
>
> In the Amendment under 37 C.F.R. § 1.115 filed herewith (the "Amendment"), Applicants have amended the claim for priority of the '963 Application to recite the prosecution status of the '604 Application, and to reflect additional priority information for the '963 Application determined by Applicants. Applicants believe that the present Application is entitled to the priority claims as submitted in the Amendment and respectfully request that the information in the Amendment be entered.

> Applicants assert that the entire delay between the date for making a priority claim under 37 C.F.R. § 1.78(a)(2)(ii) and the date such priority claim was made was unintentional, and respectfully request that the above-captioned U.S. Application be amended to reflect the priority for the invention now claimed.

Petition, 03/28/08, pp. 1-2.

Initially, the Office notes that record does not include a preliminary amendment filed in this application on May 14, 2003. Rather, the record reveals that the same amendment[1] as provided as Exhibit 1 was submitted on August 23, 2003. The Office further notes that the amendment accompanying the petition changed the status information as abandoned instead of pending for prior-filed Application No. 09/837,604. However, the references to the prior-filed applications, including the application numbers and the relationship between the applications are the same.

As stated in MPEP 201.11, there are several conditions that must be met for a later-filed nonprovisional application to receive the benefit of the filing date of a prior-filed application under 35 U.S.C. 120, which are summarized as follows:

(1) The prior-filed application must disclose the claimed invention of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112 for a benefit claim under 35 U.S.C. 120.

(2) The later-filed application must be copending with the prior-filed nonprovisional application for a benefit claim under 35 U.S.C. 120.

(3) The later-filed application must contain a reference to the prior-filed application in the first sentence of the specification or in an application data sheet for a benefit claim under 35 U.S.C. 120.

(4) Benefit claims under 35 U.S.C. 120 must identify the prior application by application number and indicate the relationship between the applications. See 37 CFR 1.78(a)(2)(i). The relationship between the applications is whether the instant application is a continuation, divisional, or continuation-in-part of the prior nonprovisional application. An example of a proper benefit claim is "this application is a continuation of prior Application No. ---, filed ---."

(5) When the nonprovisional application is entitled to an earlier U.S. effective filing date of one or more provisional applications under 35 U.S.C. 119(e), a statement such as "This application claims the benefit of U.S. Provisional Application No. 60/---, filed ---, and U.S. Provisional Application No. 60/ ---, filed ---." should appear as the first sentence(s) of the description or in

[1] The Office notes that the amendment as drafted is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

an application data sheet. In addition, for an application which is claiming the benefit under 35 U.S.C. 120 of a prior application, which in turn claims the benefit of a provisional application under 35 U.S.C. 119(e), a suitable reference would read, "This application is a continuation of U.S. Application No. 10/---, filed ---, which claims the benefit of U.S. Provisional Application No. 60/---, filed ---." No relationship should be specified whenever a priority claim to a provisional application under 35 U.S.C. 119(e) is made.

(6) The later-filed application must be filed by an inventor or inventors named in the prior-filed application for a benefit claim under 35 U.S.C. 120 and 119(e).

(7) If the later-filed application is a utility filed on or after November 29, 2000, the reference to the prior-filed application must be submitted within the time period set forth in 37 CFR 1.78(a) (e.g., during the pendency of the later-filed application and within the later of 4 months from the actual filing date of the later-filed application or 16 months from the filing date of the prior-filed application) for a benefit claim under 35 U.S.C. 120 and 119(e).

(8) If the prior-filed application was filed under 35 U.S.C. 111, the prior-filed application must be entitled to a filing date and the basic filing fee of the prior-filed application must have been paid. See 37 CFR 1.78(a)(1)(ii) regarding a benefit claim under 35 U.S.C. 120.

A review of the application record reveals that applicants have met the requirements of 37 CFR 1.78 (a)(1)-(2), (4)-(5). Specifically, the benefit claims properly identify the prior applications by application numbers and indicated the relationships between the applications. Furthermore, the references to prior-filed applications were submitted within the time period set forth in 37 CFR 1.78(a)(2)(ii), (5)(ii) (during the pendency of the later-filed application and within the later of 4 months from the actual filing date of the later-filed application). Lastly, there is no requirement an applicant identify the status information (pending or abandoned) of an application in a benefit claim. Accordingly, no petition is required in this instance for the present nonprovisional application to receive the benefit of the filing date of the prior-filed applications under 35 U.S.C. 120 and 119(e).

In view of the above, the $1,410.00 petition fee submitted is unnecessary and will be refunded to the deposit account in due course.

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed : August 26, 2009
Serial No. : 10/437980
Patent No. : 6,772,979 B2
Patent Issued : August 10, 2004
Title : METHOD AND DEVICE FOR REDUCING THE VIBRATORY MOTIONS OF THE FUSELAGE OF AN AIRCRAFT

Re: Request for Certificate of Correction

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

Respecting the alleged error the omission of inventors' names, the inventors are printed in accordance with the Declaration submitted at the time of filing the application. Therefore, no correction is in order here under Rules 1.322 or 1.323.

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

However, your attention is directed to C.F.R. 1.324, wherein a request is being made to add or delete inventor(s), after issuance of the patent.

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

Dickinson Wright PLLC
1875 Eye Street, NW, Ste. 1200
Washington, DC 20006

MD/mt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

JAMES C. LYDON
100 DAINGERFIELD ROAD, SUITE 100
ALEXANDRIA, VA 22314

COPY MAILED

OCT 0 9 2003

OFFICE OF PETITIONS

In re Application of
Alberto Epstein et al
Application No. 10/438,019
Filed: May 15, 2003
Attorney Docket No. PLAS-016

NOTICE

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Initial Patent Examination Unit.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

COPY MAILED

FEB 28 2005

OFFICE OF PETITIONS

In re Application of :
Osamu Yuki :
Application No. 10/438,029 :
Filed: May 15, 2003 :
Attorney Docket No. 03500.017286 :

ON PETITION

This is a decision on the petition, filed February 22, 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 7, 2005, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated February 3, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being forwarded to Technology Center AU 2821 for further processing of the request for continued examination under 37 CFR 1.114.

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10-2-04

TO SPE OF : ART UNIT 2821

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/438129 Patent No.: 7012377

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

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

Check 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. 117

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

SPE

2821
Art Unit

Staple Here Only!

PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : US 7,012,377 B2

DATED : March 14, 2006

INVENTOR(S) : OSAMU YUKI

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

SHEET 3:

Figure 3, (substitute FIG. 3 with FIG. 3A and 3B) see attached.

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. US 7,012,377 B2

No. of add'l. copies @ 30¢ per page

Form PTO 1050 (Rev. 3-82)

NY_Main 592905v1

SEP 2 5 2006

03500.017286.

OIPE IAP88 SEP 2 1 2006 PATENT & TRADEMARK OFFICE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	)	
	:	Examiner: Tuyet Thi Vo
OSAMU YUKI	)	
	:	Art Unit: 2821
Appln. No.: 10/438,029	)	
	:	
Filed: May 15, 2003	)	
	:	
For: DISPLAY PANEL WITH FLUORESCENT PIXELS AND PHOSPHORESCENT PIXELS	)	
	:	
U.S. Patent No.: 7,012,377 B2	)	
	:	
Issued: March 14, 2006	)	September 20, 2006

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

Certificate
SEP 2 5 2006
of Correction

CERTIFICATE OF CORRECTION
UNDER RULE 322

Sir:

It is respectfully requested that a Certificate of Correction be issued by the Patent and Trademark Office due to errors which appear in the printed patent as a result of Patent and Trademark Office mistakes. A Certificate of Correction form, in duplicate, is enclosed.

SEP 2 5 2006

Patentee's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

Peter Saxon
Attorney for Patentee
Registration No. 24,947

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_Main 592905v1

SEP 2 5 2006

Notice of Allowability	Application No.	Applicant(s)
	10/438,029	YUKI, OSAMU
	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 *June 22, 2005*.

2. ☒ The allowed claim(s) is/are *2-9,15 and 17-19*.

3. ☐ The drawings filed on _____ are accepted by the Examiner.

4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☒ None of the:
      1. ☒ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      1) ☒ hereto or 2) ☐ to Paper No./Mail Date _____.
   (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other Fig 3

TUYET VO
PRIMARY EXAMINER

REPLACEMENT SHEET

OIPE JC139
JUL 2 9 2005
PATENT & TRADEMARK OFFICE

FIG. 3A

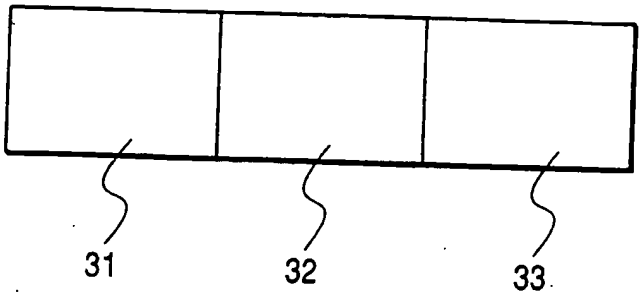


FIG. 3B

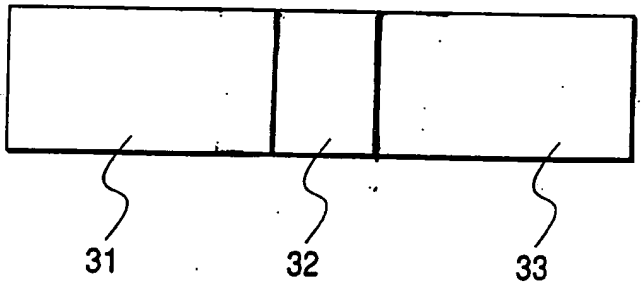
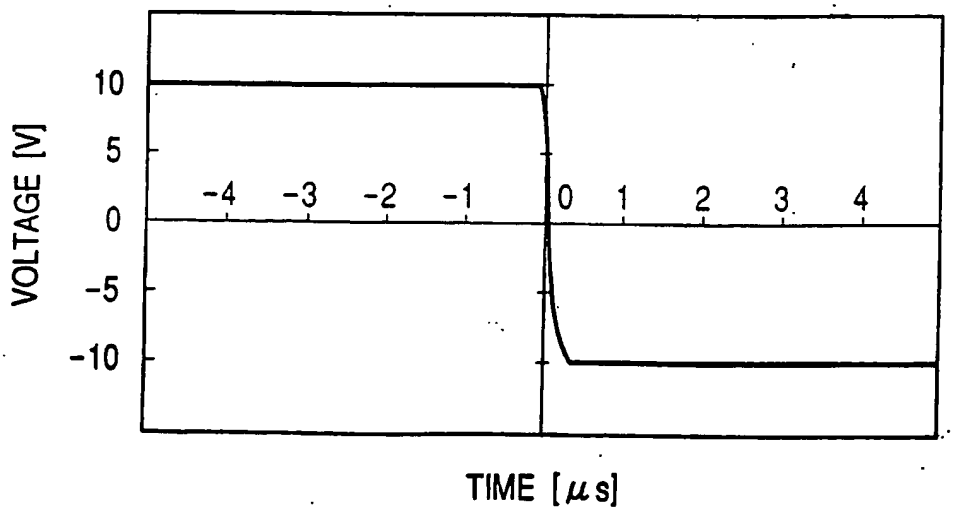


FIG. 4



OIPE IAP68
SEP 2 1 2006
PATENT & TRADEMARK OFFICE

REPLACEMENT SHEET

FIG. 3A

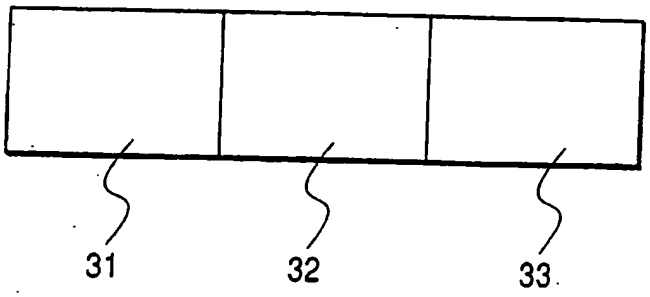


FIG. 3B

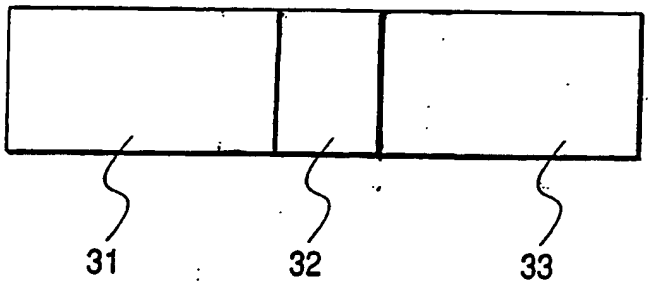
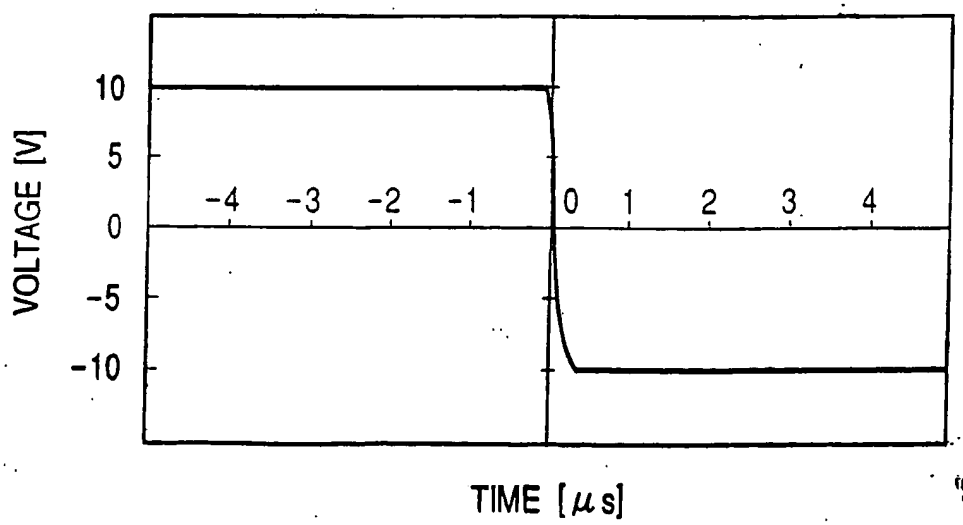


FIG. 4



SEP 2 5 2006

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Paper No. 6

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS, MO 63131

COPY MAILED

JAN 28 2005

OFFICE OF PETITIONS

In re Application of	:	
Bacon et al.	:	
Application No. 10/438,033	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. NB-EMB-1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 13, 2004 (Certificate of Mailing date of December 8, 2004), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are 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 above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed July 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 Notice of Abandonment was mailed on September 7, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(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.

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.[2]

---

[1] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks item (2). Effective December 8, 2004, the Consolidated Appropriations Act revised patent fees. The petition fee was increased from $685.00 to $750.00. Accordingly, an additional $65.00 is required to revive the above-identified application.

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

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

By hand: Customer Window located at:

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[2] See MPEP 711.03(c)(III)(C) and (D).

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United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

Paper No. 8

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS, MO 63131

COPY MAILED

MAR 11 2005

OFFICE OF PETITIONS

In re Application of	:	
Bacon et al.	:	
Application No. 10/438,033	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. NB-EMB-1	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed February 28, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 6

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS, MO 63131

COPY MAILED

JAN 28 2005

OFFICE OF PETITIONS

In re Application of	:	
Bacon et al.	:	
Application No. 10/438,035	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. NB-LAM-1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 13, 2004 (Certificate of Mailing date of December 8, 2004), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are 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 above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed July 18, 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 19, 2003. A Notice of Abandonment was mailed on September 3, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(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.

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.[2]

---

[1] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks item (2). Effective December 8, 2004, the Consolidated Appropriations Act revised patent fees. The petition fee was increased from $685.00 to $750.00. Accordingly, an additional $65.00 is required to revive the above-identified application.

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

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401 Dulany Street
Alexandria, VA 22314

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[2] See MPEP 711.03(c)(III)(C) and (D).

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Paper No. 8

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS, MO 63131

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MAR 1 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Bacon et al.	:	
Application No. 10/438,035	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. NB-LAM-1	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed February 28, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 6

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS, MO 63131

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JAN 28 2005

OFFICE OF PETITIONS

In re Application of	:	
Bacon et al.	:	
Application No. 10/438,036	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. NB-ROOF-1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 13, 2004 (Certificate of Mailing date of December 8, 2004), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are 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 above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed July 18, 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 19, 2003. A Notice of Abandonment was mailed on September 3, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(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.

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.[2]

---

[1] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks item (2). Effective December 8, 2004, the Consolidated Appropriations Act revised patent fees. The petition fee was increased from $685.00 to $750.00. Accordingly, an additional $65.00 is required to revive the above-identified application.

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[2] See MPEP 711.03(c)(III)(C) and (D).

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Paper No. 8

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS, MO 63131

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MAR 1 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Bacon et al.	:	
Application No. 10/438,036	:	ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. NB-ROOF-1	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed February 28, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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FEB 1 0 2006

TECHNOLOGY CENTER 3600

Seth M. Reiss
Godbey Griffiths Reiss Chong
1001 Bishop Street
2300 Pauahi Tower
Honolulu, HI 96813

In re Application of Eluterio Saldana Application No. 10/438,064 Filed: May 13, 2003	: : : :	DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

For: SYSTEM AND CONNECTORS FOR SMOOTH-FACED METAL FRAMING

This is a decision on Applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on June 17, 2005.

The petition is **GRANTED**.

A review of the file record reveals that an Office action was mailed on November 18, 2004 wherein a requirement for restriction was made based on the claims as filed. A response was timely filed on December 13, 2004 wherein applicant alleged that a Preliminary Amendment was filed and offered proof of filing the Preliminary Amendment. However, a Notice of Abandonment was mailed June 2, 2005 wherein the application was held abandoned for failure to properly respond to the November 18, 2004 Office action.

Applicant's petition indicates that the filing of the application on May 13, 2003 included a preliminary amendment. Petitioner has submitted evidence (post card receipt, exhibit 3) that a pre-amendment was submitted as part of the filing papers. Consequently, these amendments should have been made prior to the examiner's acting on the case (in this instance, sending out the Election/Restriction Requirement).

In view of the filing of the Preliminary Amendment before the mailing of the Office action on November 18, 2004, the requirement for restriction was made between claims not pending. Therefore, the December 13, 2004 response is considered

proper, at least to the extent of being a bone fide attempt to advance the application proceeding.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to return the application to pending status.

for

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(571) 272-6619

RAR/js: 9/9/05

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

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FEB 12 2008

OFFICE OF PETITIONS

In re Application of	:	
HILLHOUSE, Robert D.	:	
Application No. 10/438,067	:	DECISION ON PETITION
Filed: May 15, 2003	:	TO WITHDRAW
Attorney Docket No. **IVPH-0091**	:	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 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 Michael Dunnam on behalf of all attorneys of record who are associated. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **ROBERT D. HILLHOUSE**
UNIT 4B, 120 HOLLAND AVENUE
OTTAWA, ONTARIO K1Y 0X6
CANADA

cc: **PERKINS COIE**
1201 THIRD AVENUE
SUITE 4800
SEATTLE, WA 98101

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

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OCT 25 2006
OFFICE OF PETITIONS

In re Application of	:	
Nakanishi et al.	:	
Application No. 10/438,075	:	DECISION ON PETITION
Filed: 15 May, 2003	:	
Atty Docket No. AOKI-1	:	

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 13 July, 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 decision.

This application became abandoned on 28 June, 2006, for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on 27 March, 2006,

---

[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)).

which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on 11 October, 2006.

Petitioner requests that the application be revived for copendency with a concurrently-filed divisional application. A review of Office PALM records reveals that divisional application No. 11/485,307 was filed on 13 July, 2006.

The petition lacks the reply required by 37 CFR 1.137(b)(1), which states, in pertinent part, that 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.

As such, the issue and publication fees must be paid in order to revive the application.

Petitioner must submit the issue and publication fees with any renewed petition.

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

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

By FAX: (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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2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

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JAN 23 2007

OFFICE OF PETITIONS

In re Application of	:	
Nakanishi et al.	:	
Application No. 10/438,075	:	DECISION ON PETITION
Filed: 15 May, 2003	:	
Atty Docket No. AOKI-1	:	

This is a decision on the renewed petition under 37 CFR 1.137(b),[1] filed on 3 November, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 28 June, 2006, for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on 27 March, 2006, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on 11 October, 2006. The petition filed on 13 July, 2006, was dismissed on 25 October, 2006.

Petitioner requests that the application be revived for copendency with a concurrently-filed divisional application. A

---

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

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

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

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

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

review of Office PALM records reveals that divisional application No. 11/485,307 was filed on 13 July, 2006.

Receipt of the issue and publication fees is acknowledged.

Since this application is revived for purposes of continuity only with continuing Application No. 11/485,307, filed on 13 July, 2006, and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of the above-referenced application.

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

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Norman E. Carte
MacPherson Kwok Chen & Heid LLP
1762 Technology Drive
Suite 226
San Jose, CA 95110

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DEC 27 2004

OFFICE OF PETITIONS

In re Application of
Heng Liu
Application No. 10/438,108
Filed: May 13, 2003
Attorney Docket No. LIU1.PAU.02

ON PETITION

This is a decision on the PETITION TO REVIVE UNINTENTIONAL ABANDONMENT filed December 13, 2004.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to pay the Issue Fee (and Publication Fee) within three months of the mailing date, March 17, 2004, of the Notice of Allowance and Fee(s) Due. This Office action set a three-month nonextendable statutory period for reply. No reply having been received, the above-identified application became abandoned on June 18, 2004. A courtesy Notice of Abandonment was mailed on July 30, 2004.

The petition includes the required reply in the form of authorization to charge the Issue Fee and the Publication Fee[2] to Deposit Account No. 50-2257; the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

Receipt of the accompanying POWER OF ATTORNEY BY APPLICANT OF THE ENTIRE INTEREST is acknowledged and made of record.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded for processing into a patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

---

[2] There was no distinct but concurrent requirement for new drawings.

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ALEXANDRIA, VA 22313-1450
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Paper No. 5

DONALD G. FLAYNIK, JR.
CHERSKOV & FLAYNIK
THE CIVIC OPERA BUILDING
20 N. WACKER DR., SUITE 1447
CHICAGO, IL 60606

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OFFICE OF PETITIONS

In re Application of :
Potts :
Application No. 10/438,113 : ON PETITION
Filed: May 14, 2003 :
Attorney Docket No. Potts :

This decision concerns the September 9, 2003 "Petition to the Commissioner" which, as explained below, is being properly treated as a petition under 37 CFR 1.53 that the above-referenced application, in conjunction with a concurrently filed Preliminary Amendment, be accorded a filing date of May 14, 2003; and that pages 34-41 of the specification be considered part of the application filed on that day.

The petition is **GRANTED-IN-PART**, in that, the application, in conjunction with the Preliminary Amendment but not including pages 34-41 of the specification, is accorded the requested May 14, 2003 filing date; and that, pages 34-41 are not, under this decision, rendered part of the May 14, 2003 application.

Background

On May 14, 2003, the application was deposited in the USPTO as a continuation application of Application No. 09/840,520.

On July 15, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Corrected Application Papers" ("7/15/03 Notice"), stating, *inter alia*,[1] that pages 34-41 of the specification appeared to have been omitted from the application as filed. The petition then followed.

Rather than disputing the 7/15/03 Notice with respect to the omitted pages of specification, Petitioner indicates that the omitted pages (34-41) of the specification had been filed with the parent application (09/840,520), and later incorporated by reference into the instant application (10/438,113). Accordingly, Petitioner requests that pages 34-41 of the parent application specification be included in the instant application.

---

[1] The notice also requested substitute specification and replacement drawings.

Discussion

The application as deposited on May 14, 2003,
without the accompanying Preliminary Amendment,
is **not** entitled to a filing date

The USPTO file for this application consists of:

(1) A "Utility Patent Application Transmittal" form (Form PTO/SB/05 (12/97)), with only the following boxes checked:

1.	☒	Fee Transmittal Form	
2.	☒	Specification	[Total Pages ( )][2]
3.	☒	Drawing(s)	[Total Sheets (23)]
4.		Oath or Declaration	
	b. ☒	Copy from a prior application	
5.	☒	Incorporation By Reference	
12.	☒	Preliminary Amendment	
17.	☒	Continuation of prior application No. 09/840,520;	

(2) Page 2 of 2 of the fee transmittal form (Form PTO/SB/29 (12/97));

(3) The specification:
-Field of the Invention (page 1)
-Background of the Prior Art (pages 1-2)
-Summary of the Invention (pages 3-7)
-Brief Description of the Drawings (pages 8-10)
-Description of the Preferred Embodiment (pages **11-33**)
****
-Abstract of the Disclosure (page **42**);

(4) 23 sheets of drawings; and

(5) A copy of "Declaration for Patent Application" apparently from the parent application (09/840,520).

This application does not include at least one claim, as required by the patent statute and the USPTO rules and regulations, in order to be eligible for a filing date.[3]

---

[2] Applicant did not specify how many pages of the specification were being filed on that day, or whether any claims were included therein.

[3] 35 U.S.C. 111(a)(4) (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.); 112, 2nd ¶ (The specification shall conclude with **one or more claims** particularly pointing out and distinctly claiming the

In lieu of the 7/15/03 Notice, a "Notice of Incomplete Nonprovisional Application" should have been mailed, indicating that the application lacked claims and was not accorded a filing date.

The 7/15/03 Notice is hereby vacated to the extent that it refers to an accorded filing date.

The independent claims as amended and presented through the May 14, 2003 Preliminary Amendment satisfy 35 U.S.C. 112, 2nd ¶, rendering the application eligible for the May 14, 2003 filing date

The Preliminary Amendment filed concurrently with the May 14, 2003 application amends several independent claims (Claims 1, 14, 19, 23). These claims, while not conforming to the formalities provisions in the relevant rules and regulations,[4] nonetheless satisfy Section 112 (2nd ¶) of the patent statute, rendering the application[5] entitled to a filing date on May 14, 2003.

Conclusion

In view of the above, the application as deposited on May 14, 2003, along with the concurrently filed Preliminary Amendment, is hereby accorded a filing date of May 14, 2003. The petition is thus **granted** with respect to the filing date.

As to the omitted pages (34-41) of the specification, however, the petition is **dismissed**, in that, these pages will not, under the instant decision, be considered part of the May 14, 2003 application merely by virtue of the "Incorporation by Reference" clause in the transmittal.

Applicant must submit a copy of the omitted pages in the form of a preliminary amendment. The preliminary amendment will be considered by the primary examiner to ensure that the invention disclosed therein does not constitute new matter with respect to the parent application (09/840,520).[6]

---

subject matter which the applicant regards as his invention.") (emphasis added); 37 CFR 1.53(b) (The filing date of an application . . . is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description . . . and **at least one claim** pursuant to 37 CFR 1.75, and any drawings required by 37 CFR 1.81(a), are filed in the Patent and Trademark Office.) (emphasis added).

4 See 37 CFR 1.75.

5 **Excluding** pages 34-41; **including** the Preliminary Amendment.

6 Under MPEP 201.06(c) (Rev. 1, Feb. 2003), " . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or 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 continuation . . . application to include any subject matter in such prior application(s), without the need for a petition, provided the continuation application is entitled to a filing date notwithstanding the incorporation by reference."

Finally, the Office acknowledges receipt with the petition of the $130 petition fee.

The application is being returned to OIPE for further processing with a filing date of May 14, 2003, using the papers filed on that day, **including** the May 14, 2003 Preliminary Amendment; and for mailing a "Notice to File Corrected Application Papers" regarding formalities of the claims contained in the May 14, 2003 Preliminary Amendment. Upon completion of pre-examination, the file will be forwarded to Technology Center 3600 for examination in due course.

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

RC Tang
Petitions Attorney
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No. None

Karl M. Steins
Steins & Associates
Suite 120
2333 Camino del Rio South
San Diego CA 92108

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OFFICE OF PETITIONS

In re Application of
Raul Martinez
Application No. 10/438,115
Filed: May 14, 2003
Attorney Docket No.: RMA2A-G36
Title: METHODS AND APPARATUS FOR IMAGE TRANSFER TO MULTIPLE ARTICLES HAVING NON-PLANAR SURFACES

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b)[1], filed August 20, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed September 24, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue or publication fees[2]. Accordingly, the above-identified application became abandoned on December 25, 2003. It is noted that both the issue and publication fees were received on January 14, 2004. A Notice of Abandonment was mailed on March 31, 2004.

---

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

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

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

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 See MPEP §710.02(e).

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 and has made the proper statement of unintentional delay.

The petition is **GRANTED**.

After this decision is mailed, the application will be forwarded to the Office of Patent Publications for further processing into a patent.

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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HERCULES INCORPORATED
HERCULES PLAZA
1313 NORTH MARKET STREET
WILMINGTON DE 19894-0001

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OFFICE OF PETITIONS

In re Application of	:
Riehle et al.	:
Application No. 10/438,117	: DECISION DISMISSING
Filed: 14 May, 2003	: PETITION
Atty Docket No. DKT 4997 P4	:

This is a decision in reference to the petition filed on 9 July, 2004, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 14 May, 2003, with Pages 31 and 57-94 of the specification as a part of the original disclosure.

On 14 May, 2003, the application was filed.

On 2 July, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Item(s) in a Nonprovisional Application stating that the application had been accorded a filing date of 14 May, 2003, but that Pages 31 and 57-94 of the specification (description and claims) appeared to have been omitted from the application.

In response, on 9 July, 2004, the present petition was filed, accompanied by a copy of Pages 31 and 57-94 of the specification. Petitioners concede that Pages 31 and 57-94 were inadvertently omitted from the application, but states "[t]he omitted pages, pages 31 and 57-94, are identical to the corresponding pages in the parent case(s) which was incorporated by reference."

The petition is dismissed.

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, petitioners neither assert that the missing page of specification was deposited on 14 May, 2003, nor request the 9 July, 2004 (the date the drawing was 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, Pages 31 and 57-94 of the specification are not new matter if they were a part of the disclosure of the prior application.

Petitioner should file Pages 31 and 57-94 as a preliminary amendment. If Pages 31 and 57-94 are filed as a preliminary amendment, it will be reviewed by the examiner for new matter.

The application will be processed using only the application papers present on filing. The copy of Pages 31 and 57-94 of the specification filed 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 14 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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OFFICE OF PETITIONS

In re Application of	:	
Riehle et al.	:	
Application No. 10/438,117	:	DECISION ON PETITION
Filed: 14 May, 2003	:	
Attorney Docket No. 4997P4	:	

This is a decision on the petition filed on 2 September, 2005, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

---

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

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

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

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

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

The application became abandoned on 19 May, 2005, for failure to timely file a response to the non-final Office action mailed on 18 February, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

The petition is accompanied by an amendment to the claims.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.[2] The three-month extension request filed on 2 September, 2005, was submitted more than six (6) months after the mailing date of the Office action mailed on 18 February, 2005, and therefore is unnecessary. The extension of time fee paid on 2 September, 2005, will be credited to counsel's deposit account, No. 08-1800 as authorized.

This application is being referred to Technology Center Art Unit 1712 for further processing.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[2] See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

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#5

DAN M. DE LA ROSA, ESQ.
345 EAST 80TH STREET
SUITE 27H
NEW YORK NY 10021

In re Application of	:	
John S. Lee et al	:	
Serial No.: 10/438,133	:	DECISION ON
Filed: May 14, 2003	:	PETITON TO MAKE SPECIAL
For: Hair Extension Device	:	

This is in response to applicants' petition filed December 18, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

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

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

Should there be any questions with regard to this letter please contact John Kittle by letter addressed to the Director, Technology Center 3700/2900, P.O. Box 1450 Alexandria, VA 22313-1450 or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle

John E. Kittle
Director
Technology Center 3700/2900

UNITED STATES
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Commissioner for Patents
Washington, DC 20231
www.uspto.gov

9/24/03

Sughrue Mion PLLC
1010 El Camino Real Suite 300
Menlo Park CA 94025

Dear Applicant:

The Box PGPub replacement drawings for application number 10/438,144 received on 8/27/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

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Signature of Reviewer, Office of Initial Patent Examination

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Alexandria, VA 22313-1450
www.uspto.gov

MAR 23 2006

TROP PRUNER & HU, PC
8554 Katy Freeway
Suite 100
Houston, TX 77024

In re Application of: DENNISON *et al.* Serial No.: 10/438,146 Filed: May 13, 2003 Attorney Docket No.: **42P11411C**	: : : : :	DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed June 16, 2005, to withdraw the holding of abandonment in the above-identified application under 37 C.F.R. § 1.181. No fee is required.

The petition is **GRANTED.**

The application was held abandoned for failure to timely file a response to the final Office action mailed on June 24, 2004. A Notice of Abandonment was mailed on May 12, 2005.

Petitioner asserts that the final Office action mailed on June 24, 2004, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received. A copy of the file docket where the Office action would have been entered was provided to support the petition.

A review of the written record indicates that no copy of the final Office action is in the PTO record. However, the showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition is sufficient to establish a showing of non-receipt of the Office action mailed on June 24, 2004.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the final Office action dated June 24, 2004. The shortened statutory period for response set therein will be reset to run three months from the date the final Office action is re-mailed.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Robert J. Oberleitner, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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MAR 23 2006

TROP PRUNER & HU, PC
8554 Katy Freeway
Suite 100
Houston, TX 77024

In re Application of: DENNISON *et al.* Serial No.: 10/438,146 Filed: May 13, 2003 Attorney Docket No.: **42P11411C**	DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed June 16, 2005, to withdraw the holding of abandonment in the above-identified application under 37 C.F.R. § 1.181. No fee is required.

The petition is **GRANTED.**

The application was held abandoned for failure to timely file a response to the final Office action mailed on June 24, 2004. A Notice of Abandonment was mailed on May 12, 2005.

Petitioner asserts that the final Office action mailed on June 24, 2004, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received. A copy of the file docket where the Office action would have been entered was provided to support the petition.

A review of the written record indicates that no copy of the final Office action is in the PTO record. However, the showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition is sufficient to establish a showing of non-receipt of the Office action mailed on June 24, 2004.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the final Office action dated June 24, 2004. The shortened statutory period for response set therein will be reset to run three months from the date the final Office action is re-mailed.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Robert J. Oberleitner, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

Stanley, Geraldine

From: Laballe, Clayton
Sent: Monday, April 03, 2006 1:25 PM
To: Stanley, Geraldine
Subject: RE: serial no. 10/438146

The petition was filed 6/16/05 and the decision was done 3/15/06. Do you mean that the petition is not in PALM? The team leader might be able to do that. The decision was for the new director. His secretary may not know TC2800's procedure for petitions and decisions yet.

Clayton E. LaBalle
Special Programs Examiner TC2800
Jefferson Building, 8D51
(571) 272-1594

-----Original Message-----
From: Stanley, Geraldine
Sent: Monday, April 03, 2006 1:17 PM
To: Laballe, Clayton
Subject: serial no. 10/438146

I RECEIVE AN APPLICATION TO WITHDRAW THE ABANDONMENT AND RESET THE TIME PERIOD FOR THE RESPONSE, BUT THERE IS OUTSTANDING PETITION.

Geraldine Stanley
500 Dulany Street
Jefferson Bldg. 5D08-A
Alexandria, Va 22314
571-272-1625

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Paper No. 4

Philip S. Johnson
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

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OFFICE OF PETITIONS

In re Application of :
Ho, et al. :
Application No.10/438,152 : DECISION GRANTING PETITION
Filed: May 14, 2003 :
Attorney Docket No. ORT-1631 (NP) :

This is a decision on the petition filed July 31, 2003, requesting that the above-identified application retain the presently accorded a filing date of May 14, 2003, with page 233 of the specification as part of the original disclosure.

On May 14, 2003, the above-identified application was filed. On July 18, 2003, the Office of Initial Patent Examination mailed a "Notice of Omitted Items of Nonprovisional Application" (the "Notice"), stating that the application had been accorded a filing date of May 14, 2003, however, page 233 of the specification appeared to have been omitted. Relative to the omitted item, the Notice allowed a non-extendable two-month period for reply beginning from the mailing date of the Notice.

In response, on July 31, 2003, applicants filed the present petition and a copy of an Office date-stamped postcard showing that, among other items, 508 pages of the specification were received on May 14, 2003.

Upon review of the record, page 233 of the specification has not been located among the application papers. However, the evidence is convincing that the application papers deposited May 14, 2003, included page 233, which was subsequently misplaced by the Office. Therefore, the application, including page 233 of the specification, was complete on filing and entitled to the presently accorded filing date of May 14, 2003.

Accordingly, the petition is granted; the Notice is vacated, accordingly.

The application file is being returned to the Office of Initial Patent Examination for further processing with the presently accorded filing date of May 14, 2003, using the 508 pages of specification filed May 14, 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

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KEVIN J. MORIARTY
PATENT DEPARTMENT
DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265

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OFFICE OF PETITIONS

In re Application of :
Norbert Boeckmann et al :
Application No. 10/438,154 : ON PETITION
Filed: May 13, 2003 :
Attorney Docket No. 09142-US :

This is a decision on the petition filed, August 8, 2005 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 1.17(c)) within the time period provided in 37 CFR 1.192(a). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed November 23, 2004, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the-above-identified application became abandoned on November 26, 2004. See MPEP 1215.04.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on August 8, 2005.

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

This matters is being referred to Technology Center AU 3671 for further processing.

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

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DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265

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MAY 22 2006

OFFICE OF PETITIONS

In re Application of	:
Ulrich Bruening et al	: DECISION ON PETITION
Application No. 10/438,163	: UNDER 37 CFR 1.137(b)
Filed: May 13, 2003	:
Attorney Docket No. 09137-US	:

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

The petition is **granted**.

This application became abandoned for failure to timely pay the issue and publication fees on or before April 5, 2005 as required by the Notice of Allowance and Fee(s) Due, mailed January 5, 2005. A Notice of Abandonment was mailed on November 28, 2005.

The petition satisfies the requirements for a grantable petition in that the reply in the form of payment of the $1,400 issue fee and $300 publication fee; the petition fee of $1,500; and the required statement of unintentional delay have been submitted. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division.

Frances Hicks
Petitions Examiner
Office of Petitions

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MAY 18 2004

In re Application of
Craig E. Kinzer *et al*
Application No. 10/438,174
Filed: May 13, 2003
Attorney Docket No. SCLF120847

DECISION ON PETITION

This is a decision on the petition to make special filed on March 15, 2004. The $130.00 petition fee has been received.

The petition is granted.

The petition to make special is based upon the existence of an actual infringement. A review of the petition shows that all of the requirements established in MPEP § 708.02(II) for a petition on that grounds have been satisfied. Therefore, petitioner is entitled to have this application handled special in accordance with MPEP § 708.02, subsection styled "Handling of Petitions to Make Special".

Accordingly, the examiner will treat this application as special throughout its prosecution. Prior to the first action on the merits, the examiner will conduct a rigorous search for potentially interfering applications. The interference search will be brought up to date prior to each successive action.

The application is being forwarded to the Supervisory Patent Examiner of Patent Examining Art Unit 3727 who will forward the application to the examiner for action consistent with this Decision.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner,
Patent Examining Groups 3710 and 3720

Christensen, O'Connor Johnson Kindness PLLC
1420 Fifth Avenue
Suite 2800
Seattle, WA 98101-2347

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DORSEY & WHITNEY LLP
555 CALIFORNIA STREET, SUITE 1000
SUITE 1000
SAN FRANCISCO, CA 94104

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OFFICE OF PETITIONS

In re Application of	:	
Cao et. al.	:	
Application No. 10/438,186	:	DECISION REFUSING
Filed: May 13, 2003	:	STATUS UNDER
Title of Invention:	:	37 CFR 1.47
SULFONATED COPOLYMER	:	

This is in response to the Supplemental Declaration and Petition Under 37 CFR 1.183 and 37 CFR 1.47, to change the filing date of provisional application no. 60/381,136, from May 14, 2002 to May 13, 2002, and to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor(s), filed September 30, 2005, and in response to the Request to Withdraw Petition Under 37 CFR 1.183 and 37 CFR 1.47, filed October 7, 2005, noting the joinder of the inventors, and requests a refund of the petition fee for the September 30, 2005 Supplemental Declaration and Petition Under 37 CFR 1.183 and 37 CFR 1.47.

Background

A review of Office records that the above-identified application was filed on May 13, 2003, without a fully executed oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on July 30, 2003, requiring *inter alia*, an executed oath or declaration.

In response to the Notice, Applicant filed, *inter alia*, a fully executed oath or declaration and late filing oath or declaration surcharge, on October 3, 2003.

Applicant filed a Supplemental Declaration and Petition Under 37 CFR 1.183 and 37 CFR 1.47, to change the filing date of provisional application no. 60/381,136, from May 14, 2002 to May 13, 2002, and to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor(s), on September 30, 2005.

The Supplemental Declaration and Petition Under 37 CFR 1.183 and 37 CFR 1.47 requested that the filing date of provisional application no. 60/381,136, be changed from May 14, 2002 to May 13, 2002, and requested suspension of the rules requiring the signature of all inventors on a supplemental declaration.

Applicant now files, on October 7, 2005, a Request to Withdraw Petition Under 37 CFR 1.183 and 37 CFR 1.47, noting the joinder of the inventors, and requesting a refund of the petition fee for the September 30, 2005 Supplemental Declaration and Petition Under 37 CFR 1.183 and 37 CFR 1.47.

The request to change the filing date of provisional application no. 60/381,136, from May 14, 2002 to May 13, 2002

The request is dismissed.

Applicant is advised that a petition to accord a filing date is properly addressed under 37 CFR 1.53(e). As such, Applicant's request is herein treated as a petition under 37 CFR 1.53(e), to accord provisional application no. 60/381,136, a filing date of May 13, 2002 instead of the presently accorded filing date of May 14, 2002.

Applicant is advised that the method wherein correspondence will be considered filed on the date of deposit (as opposed to the date of receipt). Under 37 CFR 1.10, filing of papers and fees by "Express Mail," 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* Manual of Patent Examining Procedure ("MPEP")§513.
The date indicated on the "date-in" on the Express Mail mailing label verifies that the package was actually mailed.

Applicant may also demonstrate that this Office incorrectly accorded a filing date to an application under section 503 of the MPEP, which provides that

> [i]f 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 items listed thereon on the date stamped thereon by the USPTO.

Applicant has not provided any evidence that would demonstrate that the application was filed with this Office on May 13, 2004. The petition is dismissed without prejudice. If Applicant has documentary evidence, e.g. a copy of an Express Mail label, or a return receipt postcard, to support his assertion that the Application was deposited on May 13, 2004, Applicant should submit such evidence in any renewed petition.

Applicant's deposit account has been charged the fee for a petition under 37 CFR 1.53(e), $200, as authorized in the instant petition.

The Supplemental Declaration and Petition Under 37 CFR 1.183 and 37 CFR 1.47, and Request to Withdraw Petition Under 37 CFR 1.183 and 37 CFR 1.47, noting the joinder of the inventors

The petition is properly treated under 37 CFR 1.183, to waive the requirement under 37 CFR 1.67 that all of the inventors sign a supplemental declaration.[1]

In view of the joinder of the inventors, further consideration under 37 CFR 1.183 is not necessary.

Request for Refund

STATUTE, REGULATION, AND EXAMINING PROCEDURE

35 U.S.C. § 6(a) provides, in part, that:

> The Commissioner...may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

35 USC § 42(d) provides that:

> The Commissioner may refund any fee paid by mistake or any amount paid in excess of that required.

37 CFR 1.26(a) states in pertinent part that:

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[1] A petition under 37 CFR 1.47 only applies to the initially filed 37 CFR 1.63 declaration.

The Director may refund any fee paid by actual mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payer of such amounts.

OPINION

The applicable statute, 35 USC 42(d), authorizes the Commissioner to refund "any fee paid by mistake or any amount paid in excess of that required." Thus, the patent and Trademark Office (PTO) may refund: (1) a fee paid when no fee is required (*i.e.*, a fee paid by mistake), or (2) any fee paid in excess of the amount of the fee that is required. See Ex Parte Grady, 59 USPQ 276, 277 (Comm'r Pats. 1943)(the statutory authorization for the refund of fees is applicable only to a mistake relating to the fee payment). In the situation in which an applicant or patentee takes an action "by mistake" (e.g., files an application "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application) is not a "fee paid by mistake" within the meaning of 35 U.S.C. § 42(d).

That Applicant may have erred in presenting the petition fee to the PTO does not warrant a finding that the payment was made "by mistake." Rather, the fee was owed at the time it was paid. As noted in 37 CFR 1.26(a), Applicant's change of purpose, in this instance due to his obtaining the signatures of the formerly nonsigning inventors, does not constitute a "mistake" in payment warranting refund of the fee previously paid. The payment of the fee automatically was due, by statute, when petitioner presented, rightly, or wrongly, the aforementioned submission to the PTO for consideration of his petition.

The Supplemental Declaration has been entered and made of record.

Office records indicate that Applicant's deposit account was charged $130 for the September 30, 2005 Petition Under 37 CFR 1.183. The fee for a petition under 37 CFR 1.183 in effect as of December 8, 2004, is $400. Office records further indicate that Applicant was also incorrectly charged $200 for the October

7, 2005 Request to Withdraw Petition Under 37 CFR 1.183 and 37 CFR 1.47.

As such, Applicant has submitted a total of $330. The fee for the petition under 37 CFR 1.183 is $400. Applicant's deposit account has been charged $70 for the balance due on the petition under 37 CFR 1.183. The $200 incorrectly charged Applicant for the October 7, 2005 Request to Withdraw Petition Under 37 CFR 1.183 and 37 CFR 1.47, has been applied to the fee for the petition under 37 CFR 1.183.

This application is being referred to Technology Center Art Unit 1713 for to await Applicant's response to the final Office action.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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Commissioner for Patents
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401 9TH STREET, N.W.
SUITE 900
WASHINGTON DC 20004-2128

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JUN 29 2009

OFFICE OF PETITIONS

In re Application of	:	
Shunpei Yamazaki et al	:	
Application No. 10/438,190	:	DECISION GRANTING PETITION
Filed: May 15, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 740756-2612	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed June 26, 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 June 9, 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) 272-3208.

This application is being referred to Technology Center AU 1792 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

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

In re Application of
Osamu Toyoda et al.
Application No. 10/438,199
Filed: May 15, 2003
Attorney Docket No. **121.1049**

ON PETITION

This is a decision on the petition filed September 30, 2005, under 37 CFR 1.181, to withdraw the holding of abandonment for the above-identified application.

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

The application was held abandoned on May 24, 2005 for failure to file a timely response to the non-Final Office Action mailed February 22, 2005, which set a three (3) month shortened period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed September 8, 2005.

Petitioner asserts that a proper response, was filed on June 22, 2005, with a one month extension of time request. In support, petitioner submits a copy of the reply said to have been filed, which includes a postcard receipt date stamped June 22, 2005 by the United States Patent and Trademark Office.

The evidence submitted corroborates a timely response to the non-Final Office Action. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee is due and none has been charged.

This matter is being referred to Technology Center 2879 for appropriate action on the amendment filed June 22, 2005, a copy of which was submitted upon petition on September 30, 2005.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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MAR 24 2004

STEPHEN B. MAEBIUS
FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Application of	:
Thomas M. Behr et al	:
Serial No.: 10/438,219	: WITHDRAWAL OF ATTORNEY
Filed: May 15, 2003	:
Attorney Docket No.: 018734-0202	:

This is in response to applicants' attorneys' request, filed February 26, 2004, to withdraw from representation in the above identified application.

37 CFR 10.40 Withdrawal from employment.
(b) Mandatory withdrawal . A practitioner representing a client before the Office shall withdraw from employment if:
(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;
(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;
(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or
(4) The practitioner is discharged by the client.
(c) Permissive withdrawal. If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:
(1) The petitioner's client:
(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
(ii) Personally seeks to pursue an illegal course of conduct;
(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;
(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;
(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or
(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.
(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;
(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;
(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

Applicants' attorney has provided no reason for withdrawal, as required.

The request to withdraw is **DISMISSED**.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office facsimile number.

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

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MOLECULAR IMPRINTS, INC.
KENNETH C. BROOKS
PO BOX 81536
AUSTIN, TX 78708-1536

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APR 1 9 2005

OFFICE OF PETITIONS

In re Application of
Mario J. Meissl, et al.
Application No. 10/438,224
Filed: May 14, 2003
Attorney Docket No. P66/MII-26-08-03

ON PETITION

This is a decision in response to the petition, filed February 25, 2005, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

A review of the record revealed that the above-identified application issued as U.S. Patent No. 6,805,054 on October 19, 2004. However applicants' attorney explained during a phone conversation on April 18, 2005 with the undersigned that the application was abandoned for a failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 U.S.C. 122(b)(2)(B)(iii). Accordingly, the petition is being construed under 37 CFR 1.137(f).

The petition is DISMISSED.

A petition under 37 CFR 1.137(f) to accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen month publication country must be accompanied by:(1) the required reply, which is met by the notification of such filing in a foreign country or under a multinational treaty; (2) the petition fee as set forth in 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional. See 37 CFR 1.137(f). The instant petition lacks item 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 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)" and the omitted item noted above. This is **not** 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
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 **(703) 872-9306**.

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

Sherry D. Brinkley

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

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KENNETH C. BROOKS
PO BOX 81536
AUSTIN, TX 78708-1536

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JUL 12 2005

OFFICE OF PETITIONS

In re Patent No. 6,805,054
Issue Date: October 19, 2004
Application No. 10/438,224
Filed: May 14, 2003
Attorney Docket No. P66/MII-26-08-03

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

This is a decision on the petition under 37 CFR 1.137(f), filed April 27, 2005, which is being treated as a renewed petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification of the filing in a foreign country of an application directed to the invention disclosed in the subject application.

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

Petitioner indicates that the instant nonprovisional application became the subject of an application filed in a foreign country on May 11, 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 subject application in a foreign country.

In view of the above, this applicant became abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the 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 accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen month publication country must be accompanied by:

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

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

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

The 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 as provided by 35 U.S.C. § 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

This application matured into Patent No. 6,805,054 on October 19, 2004. Therefore, no further action being required, this patented file is being referred to Files Repository.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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ROBERT J. SCHAAP
21241 VENTURA BOULEVARD #188
WOODLAND HILLS, CA 91364

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JUL 13 2009

OFFICE OF PETITIONS

In re Application of
Theodore Sirkin
Application No. 10/438,245
Filed: May 13, 2003
For: WATER SPRINKLER HEAD WITH INTEGRALOFF-ON WATER FLOW CONTROL VALVE AND ADAPTIVE FITTINGS THEREFOR

ON PETITION

This is a decision on the petition filed April 27, 2009 entitled, "REQUEST TO REVIVE AN UNINTENTIONALLY ABANDONED PATENT APPLICATION UNDER 37 C.F.R. 1.137." This is also a decision on the paper entitled "LETTER" which indicates an unavoidable abandonment under 37 CFR 1.137.

The petitions are **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 application became abandoned for failure to reply in a timely manner to the Final Rejection mailed May 31, 2006.

The petition states: "The Applicant in the above-identified U.S. Patent Application hereby petitions the U.S. Patent and Trademark Office to revive the application on the grounds that it was unintentionally abandoned through activities which were beyond the control of the applicant." The petition further states: "it is believed that the delay in filing a response to this last office action of April 30, 2008 and responding to that office action was unavoidable for the entire period from April 30, 2008 to an inclusive of the present date." Petitioner also reference unavoidable abandonment under 37 C.F.R. 1.137 in a paper entitled "LETTER" submitted with the above petition on April 27, 2009.

Petitioner should be aware that there is no record of an Office action being mailed on April 30, 2008, in the above identified application. Also, it is **not proper** to submit a petition to revive an

unintentionally abandoned patent application under 37 CFR 1.137 and make the statement that the delay was unavoidable. **Clarification is required.**

The "unavoidable" delay and "unintentional" delay standards are not alternatives: an "unavoidable" delay is the epitome of an "unintentional" delay.

Further, the evidence submitted in the above petition is not sufficient and convincing to substantiate an unavoidable delay matter within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).

Petitioner provided no new address to forward communications to from the U.S.P.T.O. for the above identified application. Additionally, a review of the application records indicates no receipt of a request for an address change ever being submitted for the above application.

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

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401 Dulany Street
Alexandria, VA 22314

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

cc:

ROBERT J. SCHAAP
21241 VENTURA BLVD., STE. 188
WOODLAND HILLS CA 91362

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MONSANTO COMPANY
800 N.LINDBERGH BLVD.
MAILZONE E2NA
ST. LOUIS, MO 63167

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APR 18 2007

OFFICE OF PETITIONS

In re Application of	:	
Thomas J. La Rosa et al	:	
Application No. 10/438,246	:	DECISION DISMISSING PETITIONS
Filed: May 14, 2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 38-21(53333)B	:	

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed December 19, 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:

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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 the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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GAIL P. WUELLNER
PATENT DEPARTMENT, E2NA
MONSANTO COMPANY
800 N. LINDBERGH BOULEVARD
ST. LOUIS, MO 63167

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AUG 0 7 2007

OFFICE OF PETITIONS

In re Application of	:
Thomas J. La Rosa et al	:
Application No. 10/438,246	: DECISION ON PETITION
Filed: May 14, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 38-21 (53333)B	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 20, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

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

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

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

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the

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

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

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. 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 1638 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Karen Creasy

Karen Creasy
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
10/438,246	05/14/2003	1638	964	38-21(53333)B	4	4

CONFIRMATION NO. 3804

CORRECTED FILING RECEIPT

OC000000025220500

Gail P. Wuellner
Patent Department, E2NA
Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, MO 63167

Date Mailed: 08/07/2007

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)

Thomas J. La Rosa, Fenton, MO;
Linda L. Lutfiyya, St. Louis, MO;
Yihua Zhou, Ballwin, MO;
David K. Kovalic, University City, MO;
Andrey A. Boukharov, Chesterfield, MO;
Ping Li, St. Peters, MO;
Wei Wu, St. Louis, MO;
Timothy W. Conner, Chesterfield, MO;
Jingdong Liu, Chesterfield, MO;

Power of Attorney:

Joel Freed--25101
Gary Bond--29283
Thomas Kelley--29938
Lawrence Lavin--30768
Dennis Hoerner Jr--30914
Thomas McBride--32706
Grace Bonner--32963
Brian Stierwalt--33213
Donna Scherer--34719
Felissa Cagan--35089

Domestic Priority data as claimed by applicant

This application is a CIP of 09/565,306 05/04/2000 ABN
which claims benefit of 60/132,860 05/07/1999
This application 10/438,246
is a CIP of 10/155,881 05/22/2002 ABN
and is a CIP of 09/816,660 03/26/2001 ABN
which is a CIP of 09/733,089 12/11/2000 ABN
This application 10/438,246

is a CIP of 10/424,599 04/28/2003
which is a CIP of 09/985,678 11/05/2001 ABN
which is a CON of 09/304,517 05/06/1999 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 10/23/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/438,246

Projected Publication Date: 08/16/2007

Non-Publication Request: No

Early Publication Request: No

Title

Nucleic acid molecules and other molecules associated with transcription in plants and uses thereof for plant improvement

Preliminary Class

800

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce

initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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

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

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

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

NOT GRANTED

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

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MELVIN K. SILVERMAN
500 WEST CYPRESS CREEK ROAD
SUITE 500
FORT LAUDERDALE, FL 33309

COPY MAILED
NOV 29 2006
OFFICE OF PETITIONS

In re Application of	:	
GIAMPAPA	:	
Application No. 10/438,247	:	DECISION ON PETITION
Filed: May 13, 2003	:	TO WITHDRAW
Attorney Docket No. 0425.88.1	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 30, 2006.

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

A review of the file record indicates that the power of attorney to MELVIN K. SILVERMAN has been revoked by the assignee of the patent application on September 12, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 6825.

Patricia Volpe
Petitions Examiner
Office of Petitions

cc: **DAVIDOFF MALITO & HUTCHER, LLP**
605 THIRD AVENUE
34TH FL
NEW YORK, NY 10158

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
10/438,247	05/13/2003	Vincent C. Giampapa	0425.88.1

CONFIRMATION NO. 3676

OC000000021394101

Melvin K. Silverman
Suite 500
500 West Cypress Creek Road
Fort Lauderdale, FL 33309

Date Mailed: 11/29/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/12/2006.

- 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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UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 5

QUINE INTELLECTUAL PROPERTY
LAW GROUP, P.C.
P.O. BOX 458
ALAMEDA, CA 94501

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JAN 3 0 2004

OFFICE OF PETITIONS

In re Application of	:
Fred Cohen et al	:
Application No. 10/438,251	: DECISION GRANTING
Filed: May 13, 2003	:STATUS UNDER 37 CFR 1.47(a)
For: METHOD AND APPARATUS FOR	:
INVISIBLE NETWORK RESPONDER	:

This is in response to the petition under 37 CFR 1.47(a), filed December 12, 2003.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

This application is being forwarded to the Initial Patent Examination Unit.

Frances Hicks

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

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Paper No. 6

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA, CA 94501

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JAN 29 2004

OFFICE OF PETITIONS

In re Application of
Cohen, et al.
Application No. 10/438,253
Filed: May 13, 2003
Docket No.: 529-000120US
For: METHOD AND APPARATUS FOR SPECIFYING COMMUNICATION INDICATION MATCHING AND/OR RESPONSES

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This decision is in response to the petition under 37 CFR 1.47(a), filed December 19, 2003.

The petition is **GRANTED**.

Petitioner has shown that inventor Fred Cohen has refused to execute the declaration for 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 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 above-identified application will be returned to the Office of Initial Patent Examination for further processing.

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

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FRED COHEN
572 LEONA DRIVE
LIVERMORE, CA 94550

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JAN 29 2004

OFFICE OF PETITIONS

In re Application of
Cohen, et al.
Application No.: 10/438,253
Filed: May 13, 2003
Atty. Dkt. No.: 529-000120US
For: METHOD AND APPARATUS FOR SPECIFYING COMMUNICATION INDICATION MATCHING AND/OR RESPONSES

LETTER

Dear Sir:

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

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

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

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

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

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MAR 21 2006

OFFICE OF PETITIONS

In re Application of	:	
Suzanne T. Ildstad	:	
Application No. 10/438,259	:	ON PETITION
Filed: May 14, 2003	:	
Attorney Docket No.	:	
ICT003	:	

This is a decision on the petition treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 14, 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 international application (PCT/US01/45303), and provisional application (60/248,889) as 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 Commissioner may require additional where there is a question whether the delay was unintentional.

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

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Additionally, the intermediate PCT Application, No. PCT/US01/45303, was filed within twelve months of the filing date of the prior-filed provisional application, Application No. 60/248,889, which was filed on November 14, 2000, for which priority is claimed.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed PCT and provisional applications has been included in an amendment to the first sentence of the specification following the title and in an Application Data Sheet, 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 PCT 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 not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 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 not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to Petitions Attorney Derek L. Woods at (571) 272-3232. 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 1651 for appropriate action on the amendment submitted November 14, 2005, including consideration by the examiner of the claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed international application (PCT/US01/45303), and provisional application (60/248,889).

Frances Hicks
Lead Paralegal
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	DRAWINGS	TOT CLMS	IND CLMS
10/438,259	05/14/2003	1651	482	ICT003	7	16	4

CONFIRMATION NO. 3657

CORRECTED FILING RECEIPT

OC000000018281934

26191
FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

Date Mailed: 03/15/2006

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

Applicant(s)

Suzanne T. Ildstad, Prospect, KY;

Power of Attorney: The patent practitioners associated with Customer Number **26191**.

Domestic Priority data as claimed by applicant

This application is a CON of PCT/US01/45303 11/14/2001
which claims benefit of 60/248,889 11/14/2000

Foreign Applications

If Required, Foreign Filing License Granted: 07/22/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/438,259

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Methods for enhancing engraftment of purified hematopoietic stem cells in allogeneic recipients

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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Title 37, Code of Federal Regulations, 5.11 & 5.15

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

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

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NOT GRANTED

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

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
ATTN: PATENT DOCKETING 32ND FLOOR
P.O. BOX 7037
ATLANTA GA 30357-0037

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JAN 2 2 2008

OFFICE OF PETITIONS

In re Application of :
Arthur Charles Thompson :
Application No.: 10/438,262 : ON PETITION
Filed: May 14, 2003 :
Attorney Docket No: L4900-037 (0037.2) :

This is in response to the petition under 37 CFR 1.137(b) filed August 23, 2007.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed July 28, 2004. The notice set a shortened statutory period for reply of three-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). No response was received within the allowable period and the application became abandoned on October 29, 2004. A Notice of Abandonment was mailed on February 3, 2005.

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 (3) above.

As to Item (3), the *Manual of Paten Examining Procedure*, Section 7711.03(c) provides, in pertinent part, that:

> >Where a petition pursuant to 37 CFR 1.137(b) is not filed within 1 year of the date of abandonment of the application (note that abandonment takes place by operation of law, rather than by the mailing of a Notice of Abandonment), the Office may require:
>
> (A) further information as to when the applicant (or the applicant's representative) first became aware of the abandonment of the application; and
>
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative).<
>
> To avoid delay in the consideration of the merits of a petition under 37 CFR **>1.137(b)< 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(a) or 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application.

Petitioner did not provide not explanation for two and one-half year delay in filing the instant petition. Accordingly, the renewed petition must be accompanied by an explanation for said delay including, but not limited to, the considerations provided in MPEP § 711.03(c) cited above.

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 *In*

such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

cc:
R. Scott Weide
Weide & Miller, Ltd.
Bank of Nevada Building, 5th Floor
7251 West Lake Mead Blvd., Suit 530
Las Vegas, NV 89128

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

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
ATTN: PATENT DOCKETING 32ND FLOOR
P.O. BOX 7037
ATLANTA, GA 30357-0037

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OFFICE OF PETITIONS

In re Application of
Arthur Charles Thompson
Application No.: 10/438,262
Filed: May 14, 2003
Attorney Docket No: L4900-037 (0037.2)

ON PETITION

This is in response to the renewed petition under 37 CFR 1.137(b) filed March 17, 2008.

The renewed petition is GRANTED.

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed July 28, 2004. The notice set a shortened statutory period for reply of three-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). No response was received within the allowable period and the application became abandoned on October 29, 2004. A Notice of Abandonment was mailed on February 3, 2005. A petition under 37 CFR 1.137(b) was filed on August 23, 2007, and dismissed by a decision mailed January 22, 2008.

The amendment filed August 23, 2007, is noted.

It is noted that petitioner states that a document establish the right of the assignee to take action in this application was filed on August 23, 2007. A second review of the papers filed August 23, 2007, did not reveal this document. A document to this effect was found in the papers filed March 17, 2008. It is further noted that the assignee requests that the power of attorney and correspondence address of record be changed. Petitioner is advised that the assignee has not established its right to action in this application pursuant to 37 CFR 3.73. In order to effect the change in the power of attorney and correspondence address, applicant must comply with 37 CFR 3.73. Form PTO/SB/96 is enclosed to assist applicant with this. This document, along with the request to change the power of attorney and correspondence address, should not be directed to the undersigned attention as a proper request can be effected by any USPTO office. A courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

The application file is being directed to Technology Center 3700, GAU 3749 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
R. Scott Weide
Weide & Miller, Ltd.
Bank of Nevada Building, 5th Floor
7251 West Lake Mead Blvd., Suit 530
Las Vegas, NV 89128

PTO/SB/96 (01-08)
Approved for use through 04/30/2008. 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.

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: _____

Application No./Patent No.: _____ Filed/Issue Date: _____

Entitled:

_____, a _____
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☐ the assignee of the entire right, title, and interest; or

2. ☐ an assignee of less than the entire right, title and interest
(The extent (by percentage) of its ownership interest is _____%)

in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

2. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

3. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (*i.e.,* a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature	Date
Printed or Typed Name	Telephone Number
Title	

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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RICE, PLLC
ATTN: PATENT DOCKETING
P.O. BOX 7037
ATLANTA GA 30357-0037

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OFFICE OF PETITIONS

In re Application of

Arthur Charles Thompson

Application No. 10/438,262

Filing Date: May 14, 2003

Attorney Docket No. **L4900-037 (0037.2)**

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 15, 2010.

The renewed petition is **GRANTED**.

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed June 25, 2009. The notice allowed a shortened statutory period for reply of three months from its mailing date. No reply was received within the allowable period, and the application became abandoned on September 26, 2009.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

The amendment filed March 15, 2010, is noted.

The application is being forwarded to Technology Center 3700, GAU 3749 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

Cc:
Arthur Tan
Weide & Miller, Ltd.
7251 W. Lake Mead Blvd., Suite 530
Las Vegas, NV 89128

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

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OFFICE OF PETITIONS

In re Application of	:	
Evans et al.	:	
Application No. 10/438,266	:	DECISION ON PETITION
Filed: May 13, 2003	:	
Attorney Docket No. 19744P-002410US	:	

This is a decision on the petition under 37 CFR §1.137(b), filed July 17, 2006.

This above-identified application became abandoned for failure to timely file a response to a final Office Action which was mailed on November 3, 2005. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on February 4, 2006. A Notice of Abandonment was mailed on June 7, 2006.

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 the amendment submitted with the instant petition 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
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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STEPHEN C. KAUFMAN
INTELLECTUAL PROPERTY LAW DEPT.
IBM CORPORATION
P.O. BOX 218
YORKTOWN HEIGHTS NY 10598

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MAR 25 2008

OFFICE OF PETITIONS

In re Application of
Marina BIBERSTEIN et al.
Application No. 10/438,272
Filed: May 14, 2003
Attorney Docket No. IL920030011US1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 24, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The 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 28, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is May 30, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, 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.

The Office acknowledges the notice of appeal filed with the petition October 24, 2007. However, the request for continued examination (RCE) filed on January 24, 2008 withdraws the appeal, which was substantially not needed.

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 notice of appeal fee of $510.00 filed October 24, 2007 and extension of time fee of $120.00 filed January 24, 2008 were unnecessary, the petitioner's deposit account 090468 will be credited $630.

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 2193 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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

Cc: SUZANNE EREZ
IBM HAIFA LABS
HAIFA UNIVERSITY, MOUNT CARMEL
HAIFA 39105

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wk

Mailed: 8/19/05

In re application of	:	
Futong Cui et al.	:	DECISION ON
Serial No. 10/438,273	:	PETITION
Filed: May 14, 2003	:	
For: Water Repellent Compositions For Wood Preservatives	:	

This is a decision on the petition filed on November 18, 2004. The petition requests to restart the date for response to the Office Action mailed on June 18, 2004.

DECISION

The Instant PETITION is accepted as a petition under 37 CFR 1.181(no fee).

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.

Applicant has provided evidence that meets the criteria stated above.

The petition is **GRANTED.**

The office action will be resent and the time period for reply restarted.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

George Wheeler
McAndrews, Held & Malloy, LTD.
500 West Madison Street
Chicago, Illinois 60661

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CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

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OCT 25 2006
OFFICE OF PETITIONS

In re Application of	:
Nakano et al.	: DECISION DISMISSING PETITION
Application No. 10/438,279	: UNDER 37 CFR 3.81(b)
Filed: 14 May, 2003	:
Atty Docket No. 2003946-0043	:
(SERA OP1573)	:

This is a decision on the "PETITION UNDER 37 CFR 1.181 TO CORRECT ISSUE FEE TRANSMITTAL," filed on 6 June, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee information on the Fee(s) Transmittal form PTOL-85(b).

The request is **dismissed**.

Petitioners state that the assignee's name is incorrectly captioned on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that the patent issue to **EISAI CO., LTD., TOKYO, JAPAN**.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request 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). As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted.

---

[1] *See* Official Gazette of June 22, 2004.

A review of Office database assignment records reflects that an assignment to EISAI CO., LTD., TOKYO, JAPAN has been recorded. 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 EISAI CO., LTD., TOKYO, JAPAN was the assignee of record at the time of issuance of the instant application into a patent. *Note also* 35 U.S.C. § 152.

In view of the above **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 EISAI CO., LTD., TOKYO, JAPAN, 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.*

The fee for the request under 37 CFR 3.81(b) has been charged to counsel's deposit account, as authorized in the petition.

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, as this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3231.

After the submission by petitioner of the request for a certificate of correction to correct the assignee data on the front page of the Letters Patent, any questions pertinent thereto should be directed to the Certificates of Correction Branch at (703) 305-8309.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

12-12-06

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Patent No. : 7,125,716
Ser. No. : 10/438,279
Inventor(s) : Nakano, et. al.
Issued : October 24, 2006
Title : CULTURALE MITOCHONDRIAL CELLS WITH NO NUCLEUS, SHOWING MITOCHONDRIAL ACTIVITY
Docket No. : 2003946-0043

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

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

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Eva James
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) **308-9390 ext. 111** or (703) 308-8309

Choate, Hall & Stewart, LLP
Two International Place
Boston, MA 02110

ej

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TWO INTERNATIONAL PLACE
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OCT 25 2006
OFFICE OF PETITIONS

In re Application of	:
Nakano et al.	: DECISION DISMISSING PETITION
Application No. 10/438,279	: UNDER 37 CFR 3.81(b)
Filed: 14 May, 2003	:
Atty Docket No. 2003946-0043	:
(SERA OP1573)	:

This is a decision on the "PETITION UNDER 37 CFR 1.181 TO CORRECT ISSUE FEE TRANSMITTAL," filed on 6 June, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee information on the Fee(s) Transmittal form PTOL-85(b).

The request is **dismissed**.

Petitioners state that the assignee's name is incorrectly captioned on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that the patent issue to **EISAI CO., LTD., TOKYO, JAPAN**.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request 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). As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted.

[1] *See* Official Gazette of June 22, 2004.

A review of Office database assignment records reflects that an assignment to EISAI CO., LTD., TOKYO, JAPAN has been recorded. 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 EISAI CO., LTD., TOKYO, JAPAN was the assignee of record at the time of issuance of the instant application into a patent. *Note also* 35 U.S.C. § 152.

In view of the above **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 EISAI CO., LTD., TOKYO, JAPAN, 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.*

The fee for the request under 37 CFR 3.81(b) has been charged to counsel's deposit account, as authorized in the petition.

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, as this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3231.

After the submission by petitioner of the request for a certificate of correction to correct the assignee data on the front page of the Letters Patent, any questions pertinent thereto should be directed to the Certificates of Correction Branch at (703) 305-8309.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

7/21/03

Bromberg and Sunstein LLP
125 Summer Street
Boston MA 02110-1618

Dear Applicant:

The Box PGPub replacement drawings for application number 10/438,284 received on 7/7/03 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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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

Paper 6

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JAN 23 2004

OFFICE OF PETITIONS

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

In re Application of
Fred Cohen et al.
Application No. 10/438,285
Filed: May 13,2003
Attorney Docket No. 529-000130US

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed under 37 CFR 1.47(a) on December 19, 2003.

The petition is GRANTED.

The above-identified application was filed on May 13, 2003. The application names Fred Cohen, Anthony George Carathimas and Eric Daniel Thomas as inventors. The declaration is signed by inventors Carathimas and Thomas only. The applicant files this petition, in response to the Notice to File Missing Parts mailed July 25, 2003, with a request for a three month extension of time. The petition alleges that joint inventor Fred Cohen refuses to sign the oath/declaration and seeks status under 37 CFR 1.47(a).

By declaration of Stephen J. LeBlanc, Attorney of Record, it was shown that Mr. Cohen asked that the application papers not be mailed to him and that he advised that he would not execute the declaration. The evidence provided indicates that Mr. Cohen refused to execute the declaration both in a telephone conversation with Mr. LeBlanc and via an E-mail to Mr. LeBlanc.

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

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

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

The application is being forwarded to the Office of Initial Patent Examination to be processed in due course.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 7

FRED COHEN
572 LEONA DRIVE
LIVERMORE, CA 94550

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JAN 23 2004

OFFICE OF PETITIONS

In re Application of
Fred Cohen et al.
Application No. 10/438,285
Filed: May 13, 2003
For: METHOD AND APPARATUS FOR CONFIGURABLE COMMUNICATION NETWORK DEFENSES

Dear Mr. Cohen:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned Petitions Attorney at (703) 305-4497. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc:
QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

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 ROAD
PALO ALTO, CA 94304-1050

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JUN 25 2007

OFFICE OF PETITIONS

In re Application of	:	
YUAN, et al.	:	
Application No. 10/438,294	:	DECISION ON PETITION
Filed: May 14, 2003	:	TO WITHDRAW
Attorney Docket No. **10002-704.201**	:	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 8, 2006.

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

A review of the file record indicates that the power of attorney to *WILSON SONSINI GOODRICH & ROSATI* has been revoked by the assignee of the patent application on January 5, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **SHAY LAW GROUP LLP**
2755 CAMPUS DRIVE, SUITE 210
SAN MATEO, CA 94403

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)
6845964	2005-01-25	10438296	2003-05-14	1521-8

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	/gmk/	Date (YYYY-MM-DD)	2009-08-27
Name	George M. Kaplan	Registration Number	28375

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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In re Patent No. 6845964
Issue Date: January 25,2005
Application No. 10438296
Filed: May 14,2003
Attorney Docket No. 336 P003

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

This is a decision on the electronic petition, filed August 27,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 27,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Finnegan, Henderson, Farabow,
Garrett & Dunner, LLP
901 New York Avenue, NW
Washington, DC 2001-4413

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JUL 3 1 2006

OFFICE OF PETITIONS

In re Application of
Yi-Yung JENG
Application No. 10/438,298
Filed: May 13, 2003
Attorney Docket No. 09182.0002-00000

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 22, 2005.

The request is **NOT APPROVED**.

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

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, assignee gave instructions to transfer application to new counsel, does not meet any of the conditions set forth in 37 CFR 10.40.

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

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

for David Bucci
Petitions Examiner
Office of Petitions

cc: Jeff Toler
IP Legal Services
500- Plaza On The Lake
Suite 265
Austin, TX 78746

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

TOLER SCHAFFER, LLP
8500 BLUFFSTONE COVE
SUITE A201
AUSTIN TX 78759

In re Application of :
Jeng : DECISION ON PETITION
Application No. 10/438,298 :
Filed: May 13, 2003 :
Atty. Dkt. No.: 1087-PROT0002 :

This decision is in response to the petition under 37 CFR 1.181 to withdraw the holding of abandonment filed July 6, 2007. This matter is also being treated alternatively, as requested, as a petition under 37 CFR 1.137(b) for revival of an unintentionally abandoned application.

DECISION UNDER 37 CFR 1.181

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

This application became abandoned December 26, 2006 for failure to timely submit a proper reply to the non-final Office action mailed September 25, 2006. The non-final Office action set a three month period of time for reply. Notice of Abandonment was mailed June 15, 2007.

Petitioner alleges non-receipt of the non-final Office action mailed September 25, 2006 as a result of the USPTO's failure to mail the non-final Office action to the correct correspondence address. Petitioners argue a request to withdraw as attorney was filed by applicant's prior counsel on November 22, 2005 and dismissed July 31, 2006. The request to withdraw as attorney indicated that the correspondence address should be changed to that of petitioner. As a result of the failure to enter the change of correspondence address, petitioner did not receive the non-final Office action that was mailed September 25, 2006 to applicant's prior counsel.

The arguments and evidence have been carefully reviewed, but are not found convincing. The non-final Office action was properly mailed to the then correspondence address of record. An attorney or agent cannot withdraw from an application until granted

permission to do so by the agency. For the reasons set forth in the decision mailed July 31, 2006, the request to withdraw as attorney was dismissed. The decision was duly mailed to applicant's then counsel and a courtesy copy was mailed to Jeff Toler, petitioner herein, at IP Legal Services, 500 Plaza On The Lake Suite 265, Austin, TX 78746.

Accordingly, the USPTO properly advised all parties that the request to withdraw as attorney was dismissed, that the requested change of correspondence address would not be entered, and mailed the decision to all pertinent parties, thus placing all parties on notice that all future correspondence would continue to be directed to the correspondence address of record until such time as appropriate instruction was received to the contrary.

Appropriate instruction was received June 6, 2007 and entered into the record on June 13, 2007. Accordingly, as a proper change of correspondence address was not submitted until June 6, 2007, after the mailing of the non-final Office action, there was no error in the mailing of the non-final Office action on the part of the USPTO.

Failure to promptly and properly advise the USPTO of a change in correspondence address is not grounds for withdrawal of the holding of abandonment nor is such inaction deemed unavoidable within the meaning of 37 CFR 1.137(a). *See, generally*, MPEP 711.03(c).

DECISION UNDER 37 CFR 1.137(b)

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

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.

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

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

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

FLEIT KAIN GIBBONS GUTMAN & BONGINI
COURVOISIER CENTRE II, SUITE 404
601 BRICKELL KEY DRIVE
MIAMI, FL 33131

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OCT 0 8 2003

OFFICE OF PETITIONS

In re Application of	:
Kevin Russell	: DECISION REFUSING
Application No. 10/438,303	: STATUS UNDER
Filed: May 14, 2003	: 37 CFR 1.47(b)
Attorney Docket No. 706-A02-057	:
For: PHANTOM FOR INTENSITY	:
MODULATED RADIATION THERAPY	:

This is in response to the petition under 37 CFR 1.47(b), filed September 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(b)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

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

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
(2) an acceptable oath or declaration;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;
(5) proof of proprietary interest; and
(6) proof of irreparable damage.

Applicant lacks item (1) set forth above.

As to item (1), the record indicates that Russell may have refused to sign a declaration listing Lei Dong as a co-inventor. However, such refusal is not necessarily refusal to sign a declaration solely in his name. For example, if he believed that Dong was not a co-inventor, he would have been obliged not to sign the first declaration. Russell should be presented with a copy of the declaration listing only his name. Petitioner may mail a copy of the declaration to the inventor along with instructions setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as a certified mail return receipt, cover letter of instructions, telegram, etc.

Petitioner should note that if there is an express 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. If there is an express written refusal, a copy of the document evidencing that refusal

must be made part of the affidavit or declaration. If the non-signing inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

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

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

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

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

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

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COURVOISIER CENTRE II, SUITE 404
601 BRICKELL KEY DRIVE
MIAMI, FL 33131

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OCT 08 2003

OFFICE OF PETITIONS

In re Application of
Kevin Russell
Application No. 10/438,303
Filed: May 14, 2003
Attorney Docket No. 706-A02-057
For: PHANTOM FOR INTENSITY MODULATED RADIATION THERAPY

: DECISION REFUSING
: STATUS UNDER
: 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed September 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(b)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

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

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
(2) an acceptable oath or declaration;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;
(5) proof of proprietary interest; and
(6) proof of irreparable damage.

Applicant lacks item (1) set forth above.

As to item (1), the record indicates that Russell may have refused to sign a declaration listing Lei Dong as a co-inventor. However, such refusal is not necessarily refusal to sign a declaration solely in his name. For example, if he believed that Dong was not a co-inventor, he would have been obliged not to sign the first declaration. Russell should be presented with a copy of the declaration listing only his name. Petitioner may mail a copy of the declaration to the inventor along with instructions setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as a certified mail return receipt, cover letter of instructions, telegram, etc.

Petitioner should note that if there is an express 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. If there is an express written refusal, a copy of the document evidencing that refusal

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OFFICE OF PETITIONS

must be made part of the affidavit or declaration. If the non-signing inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

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

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

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

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

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
www.uspto.gov

Paper No. 9

FLEIT KAIN GIBBONS GUTMAN & BONGINI
COURVOISIER CENTRE II, SUITE 404
601 BRICKELL KEY DRIVE
MIAMI, FL 33131

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DEC 15 2003

OFFICE OF PETITIONS

In re Application of	:	
Kevin Russell	:	DECISION ACCORDING
Application No. 10/438,303	:	STATUS UNDER
Filed: May 14, 2003	:	37 CFR 1.47(b)
Attorney Docket No. 706-A02-057	:	
For: PHANTOM FOR INTENSITY	:	
MODULATED RADIATION THERAPY	:	

This is in response to the renewed petition under 37 CFR 1.47(b), filed November 18, 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.

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

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing 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 Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 10

Kevin J. Russell
1465 Cypress Avenue
Melbourne, FL 32935

COPY MAILED
DEC 15 2003
OFFICE OF PETITIONS

In re Application of :
Kevin Russell :
Application No. 10/438,303 :
Filed: May 14, 2003 : Letter
Attorney Docket No. 706-A02-057 :
For: PHANTOM FOR INTENSITY :
MODULATED RADIATION THERAPY :

Dear Mr. Russell:

You are named as the sole inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as the sole inventor.

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

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: FLEIT KAIN GIBBONS GUTMAN & BONGINI
COURVOISIER CENTRE II, SUITE 404
601 BRICKELL KEY DRIVE
MIAMI, FL 33131

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Application of	:	
Ren-Yuh Wang	:	
Application No. 10/438,306	:	DECISION ON PETITION
Filed: May 13, 2005	:	TO WITHDRAW
Attorney Docket No. 9182.0003-00	:	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, 2005.

The request is **NOT APPROVED**.

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

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, that the assignee has requested transfer is not proper as assignee has not intervened in accordance with 37 C.F.R 3.71, and therefore do not meet any the conditions set forth in 37 CFR 10.40.

All future communications from the Office will be directed the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

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

David Buczi
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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TOLER SCHAFFER, LLP
8500 BLUFFSTONE COVE
SUITE A201
AUSTIN TX 78759

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JUL 30 2007

OFFICE OF PETITIONS

In re Application of
Ren-Yuh Wang
Application No. 10/438,306
Filed: May 13, 2006
Attorney Docket No. 1087PROT0003

ON PETITION

This is a decision on the petition filed July 6, 2007, to withdraw the holding of abandonment under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513. The petition also pleads in the alternative to revive the instant application under 37 CFR 1.137(a) or 1.137(b).

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

This application became abandoned October 24, 2006 for failure to file a proper and timely response to the Office Action/Restriction Requirement mailed September 22, 2006 which set a period for reply of the longer of one month or thirty (30) days. No response having been filed a Notice of Abandonment was mailed June 15, 2007.

The file record discloses that the Office Action/Restriction Requirement was mailed to what was believed to be the address of record. However, petitioner contends that it was not received. Petitioner submits as proof of non-receipt a copy of the file jacket and docket report. A review of the file record reveals that a Petition to Withdraw was filed by prior counsel but that at the time the Office Action/Restriction Requirement was mailed, no decision on petition had been rendered and thus the Office Action/Restriction Requirement was properly addressed, based on the information found in the file, and thus petitioner's failure to receive the office action was not due to an error on the part of the agency. Therein, the holding of abandonment cannot be withdrawn.

SHOWING OF UNAVOIDABLE DELAY

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have

adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

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 or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

Subsequent to the mailing of the Office Action/Restriction Requirement, petitioners filed a proper Revocation and Power of Attorney on June 6, 2007, which was accepted June 13, 2007 however, prior to the filing of the Revocation and Power of Attorney the address of record remained that of the previous attorneys of record since the Petition to Withdraw filed by the previous attorneys of record was not properly filed and the decision therefore dismissed.

Since petitioners have failed to establish that the delay in responding to the Office Action/Restriction Requirement was unavoidable, the petition cannot be granted under 37 CFR 1.137(a).

Instead, and in view of the petition alternatively pleading under the unintentional standard and authorizing charges from deposit account 50-2469, the petition fee in the

---

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

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

amount of $750.00 has been charged.

Furthermore, since the petition was treated under the unavoidable standard the petition fee paid, the petition fee in the amount of $250 has been charged to deposit account no. 50-2469 and cannot be refunded.

The response to the restriction requirement filed July 6, 2007 will be referred to Technology Center 2621 for further processing.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ren-Yuh Wang
Application No. 10/438,306
Filed: May 13, 2005
Attorney Docket No. 9182.0003-00

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 11, 2006.

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

A review of the file record indicates that the power of attorney to Gary Edwards and all attorneys/agents associated with customer number 22852 has been revoked by the applicant of the patent application on June 6, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

There are no outstanding office actions at this time.

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

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Jeff Toler
IP Legal Services
5000 Plaza on the Lake, Suite 265
Austin, TX 78746

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ALEXANDRIA, VA 22313-1450
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Paper No. 4

KNOBBE MARTENS OLSEN & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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OCT 21 2003
OFFICE OF PETITIONS

In re Application of :
Eigler et al. :
Application No. 10/438,309 :
Filed: May 13, 2003 : Decision on Petition
Attorney Docket Number:
SAVCOR.002A

This is a decision on the Petition, filed September 12, 2003 (Certificate of Mailing dated September 9, 2003), requesting the application be accorded a filing date of May 13, 2003, including drawing Figure 10 described in the specification.

The petition is **dismissed**.

The application was filed on May 13, 2003. However, on July 24, 2003, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application, noting that a filing date had been accorded the application, but that the basic filing fee, and oath or declaration were missing from that application, and requiring the filing fee, oath or declaration, and late filing fee [and] oath or declaration surcharge. The Notice set a two-month period for reply. Extensions of time were also available under 37 CFR §1.136(a). The Notice also informed Petitioner that drawing Figure 10, described in the specification, appeared to have been omitted from the application.

In response, Petitioner files the instant petition wherein Petitioner avers that drawing Figure 10 was among 11 sheets of drawings originally filed with the application on May 13, 2003, and were received by this Office as evidenced by the return-receipt postcard. In support, Petitioner provides a copy of a return receipt postcard acknowledging receipt of, *inter alia*, 11 sheets of drawings on May 13, 2003.

A review of the return receipt postcard reveals that Petitioner is correct. The postcard acknowledges receipt of 11 sheets of

drawings on May 13, 2003. However, Petitioner has failed to include a copy of drawing Figure 10 with the instant petition.

Petitioner must provide a copy of drawing Figure 10. Petitioner is also advised that drawing Figures may not be filed via facsimile for purposes of receiving a filing date. *See*, 37 CFR 1.6.

The application file will be retained in the Office of petitions for a period of TWO MONTHS to await the filing of drawing Figure 10 described in the specification.

It is also noted that Petitioner has filed a copy of an assignment with the instant petition. The copy of the assignment has been forwarded to the Assignment Branch for recordation.

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

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

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202-3513

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 8

KNOBBE MARTENS OLSEN & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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NOV 25 2003

OFFICE OF PETITIONS

In re Application of :
Eigler et al. :
Application No. 10/438,309 :
Filed: May 13, 2003 : Decision on Petition
Attorney Docket Number: :
SAVCOR.002A :

This is a decision on the Response to Decision on Petition, filed November 10, 2003 (Certificate of Mailing dated November 5, 2003), enclosing a copy of drawing Figure 10 described in the specification.

The petition is **granted**.

The application was filed on May 13, 2003. However, on July 24, 2003, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application, noting that a filing date had been accorded the application, but that the basic filing fee, and oath or declaration were missing from that application, and requiring the filing fee, oath or declaration, and late filing fee [and] oath or declaration surcharge. The Notice set a two-month period for reply. Extensions of time were also available under 37 CFR §1.136(a). The Notice also informed Petitioner that drawing Figure 10, described in the specification, appeared to have been omitted from the application.

In response, on September 12, 2003, Petitioner filed a petition wherein Petitioner argued that drawing Figure 10 was among 11 sheets of drawings originally filed with the application on May 13, 2003, and were received by this Office as evidenced by the return-receipt postcard. In support, Petitioner provided a copy of a return receipt postcard acknowledging receipt of, *inter alia*, 11 sheets of drawings on May 13, 2003.

A review of the return receipt postcard revealed that Petitioner was correct. The postcard acknowledged receipt of 11 sheets of

drawings on May 13, 2003. However, Petitioner failed to include a copy of drawing Figure 10 with the September 12, 2003 petition.

With the instant Response to Decision on Petition, petitioner has filed the copy of drawing Figure 10 identified in the return-receipt postcard.

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

The petition is **granted**. The Notice of Incomplete Nonprovisional Application, mailed July 24, 2003, to the extent that Figure 10 described in the specification was not omitted from the application, is hereby withdrawn.

No fee has been charged and none is due.

The application will be returned to the Office of Initial Patent Examination for further processing as a nonprovisional application with a filing date of May 13, 2003, using the original application papers filed, along with one sheet of drawing Figure 10 filed on November 10, 2003. Office records should reflect that 11 sheets of drawings were present on filing.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THE WEBB LAW FIRM
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1845

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OFFICE OF PETITIONS

In re Application of Traviss et al. :
Application No. 10/438,310 : Decision on Petition
Filing Date: May 14, 2003 :
Attorney Docket No. 3576-022126 :

This is a decision on the petition under 37 CFR 1.181, filed December 18, 2006, to withdraw the holding of abandonment.

The petition is **granted.**

Due to Office error, the address of record was incorrectly changed.

The Office mailed a non-final Office action to the incorrect address on March 23, 2006.

The Office did not receive a reply.

A Notice of Abandonment was mailed October 4, 2006, to the correct address of record.

The instant petition was filed December 18, 2006, and states petitioner did not receive the non-final Office action.

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

Technology Center Art Unit 1754 will be informed of the instant decision and the examiner will consider the amendment and other papers filed December 18, 2006, 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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P.O. BOX 1450
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CHRISTENSEN, O'CONNOR, JOHNSON,
KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WASHINGTON 98101

MAIL

SEP 2 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
C.E. Kinzer, et al.
Application No. 10/438,336
Filed: May 13, 2003
For: DVD RANDOM SHUFFLE METHOD

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed August 03, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

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

MAY 26 2005

In re Application of	:	
John C. Herr et al	:	NOTICE OF WITHDRAWAL
Serial No. 10/438,339	:	FROM ISSUE
Filed: May 9, 2003	:	UNDER 37 CFR 1.313(b)
For: HUMAN TESTIS SPECIFIC	:	
SERINE/THREONINE KINASE 1 & 2	:	

The above-identified application is withdrawn from issue after payment of the issue fee due to a mistake on the part of the Office. 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 Ponnathapura Achutamurthy at (571) 272-0928.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Bruce M. Kisliuk
Director, Technology Center 1600

UNIVERSITY OF VIRGINIA PATENT FOUNDATION
250 WEST MAIN STREET, SUITE 300
CHARLOTTESVILLE VA 22902

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

Paper No. None

Naval Medical Research Center
Office of Counsel (Code 00L)
503 Robert Grant Avenue
Silver Spring MD 20910-7500

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SEP 20 2005
OFFICE OF PETITIONS

In re Application of
Wei Mei Ching et al.
Application No. 10/438,345
Filed: May 15, 2003
Attorney Docket Number: NC 83,906
Title: ORIENTIA TSUTSUGAMUSHI TRUNCATED RECOMBINANT OUTER MEMBRANE PROTEIN (R47) AND (R56) VACCINES DIAGNOSTICS AND THERAPEUTICS FOR SCRUB TYPHUS AND HIV INFECTION

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

This is a decision on the petition, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application, filed on August 24, 2005.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed July 21, 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 22, 2003. A Notice of Abandonment was mailed on September 3, 2004.

With the present petition, Petitioner has submitted the petition fee, a declaration which has been

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.

signed by each of the three joint inventors, the surcharge associated with the late submission of the same, a printout of the sequence listing, and the proper statement of unintentional delay.

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.

Paul Shanoski

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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JOHN F. SALAZAR
MIDDLETON & REUTLINGER
2500 BROWN & WILLIAMSON TOWER
LOUISVILLE, KY 40202

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JAN 21 2005

OFFICE OF PETITIONS

In re Application of	:	
Andreas Dittrich, et. al.	:	
Application No. 10/438,387	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. BATG-8	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on November 1, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed July 20, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned after midnight October 20, 2004.

In response, petitioner submitted with the instant petition $1,370 for the petition to revive fee, $1,370 for the issue fee, $300 for the publication fee and $30 for ten (10) advance soft copies.

The petition is **GRANTED**.

The application file is being referred to the Office of Publications for further processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Cindy S. Kaplan
P.O. BOX 2448
SARATOGA, CA 95070

Mail Date: 04/27/2010

Applicant	: Russell Gardo	: DECISION ON REQUEST FOR
Patent Number	: 7602706	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/438,396	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/15/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1552** 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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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

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OFFICE OF PETITIONS

In re Application of	:	
Narayanan, et al.	:	
Application No. 10/438,402	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. CM05741H	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 11, 2006 (certificate of mailing date January 9, 2006), to revive the above-identified application.

This application became abandoned for failure to timely pay the issue fee and publication fee within three (3) months of the mailing of the Notice of Allowance and Fee(s) Due, mailed September 23, 2005. Accordingly, this application became abandoned on December 24, 2005. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Applicants have submitted a proper reply in the form of the issue fee, the publication fee and a completed PTOL-85, an acceptable statement of the unintentional nature of the delay in responding to the September 23, 2005 Notice of Allowance and Fee(s) Due, and the petition fee.

The petition is **granted**.

This application is being forwarded to Publishing Division for processing into a patent.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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IRVINE, CA 92618

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OFFICE OF PETITIONS

In re Application of	:
Wen-Chang Shih et al	:
Application No. 10/438,406	: DECISION GRANTING PETITION
Filed: May 14, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. JC-10131-C	:

This is a decision on the petition, filed March 9, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 3, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 1732 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

In re Application of DiMatteo et al. :
Application No. 10/438,409 :
Filing Date: May 15, 2003 :
Attorney Docket No. 498-288 :

Decision on Petition

This is a decision on the petition filed September 10, 2007, which is being treated as a petition under 37 CFR 1.183 to waive the need for the signatures of all the inventors on 37 CFR 1.131 declarations.[1]

The petition is **granted**.

Petitioner submitted a declaration pursuant to 37 CFR 1.131(a) on September 10, 2007, with the instant petition. The September 10, 2007 declaration is not signed by any of the inventors. Instead, the declaration is signed by an officer of the assignee. Petitioner requests the Office accept the September 10, 2007, without the signature of any of the inventors.

Based on the facts presented in the petition, the declaration executed by the assignee will be accepted.

The fee for a petition under 37 CFR 1.47 is $200. The fee for a petition under 37 CFR 1.183 is $400. Therefore, $400 has been charged to petitioner's deposit account.

Technology Center Art Unit 3731 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] Although the petition was filed under 37 CFR 1.47, once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Therefore, the instant petition is properly treated under 37 CFR 1.183.

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

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OFFICE OF PETITIONS

In re Application of
DIMATTEO, Kristian et al.
Application No. 10/438,409
Filed: May 15, 2003
Attorney Docket No. **S63.2B-14478-US01**

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 16, 2009.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to HOFFMANN & BARON, LLP has been revoked by the assignee of the patent application on July 01, 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 Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **VIDAS, ARRETT & STEINKRAUS, P.A.**
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE MN 55344

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OFFICE OF PETITIONS

CHARLES F. LIND & ASSOCIATES
2210 East Sherwood
ARLINGTON HEIGHTS IL 60004-5950

In re Application of Joel J. Berg Application No. 10/438,410 Filed: May 16, 2003 Attorney Docket Number: CFL 27434 Title: BOARD FOR PEGBOARD SYSTEM	DECISION ON PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application, filed on February 27, 2006.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed July 13, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue fees or publication fees[2]. Accordingly, the

---

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

2 See MPEP §710.02(e).

above-identified application became abandoned on October 14, 2005.

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

With the present petition, Petitioner has submitted the petition fee, the publication fee, the issue fee, and a statement which is being construed as the proper statement of unintentional delay.

As such, the petition is **GRANTED**.

The phone number for the Office of Patent Publication is (571) 272-4200. 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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In re Patent No. 6846113
Issue Date: January 25,2005
Application No. 10438411
Filed: May 15,2003
Attorney Docket No. 7189-101/103055996

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

This is a decision on the electronic petition, filed April 8,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 8,2009 . 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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OFFICE OF PETITIONS

RICHARD S. ROBERTS
ROBERTS & ROBERTS, LLP, ATTORNEYS AT LAW
P.O . BOX 484
PRINCETON, NJ 08542

In re Application of
Arie Bortinger
Application No. 10/438,425
Filed: May 15, 2003
Attorney Docket No. SD-214A

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed November 12, 2004.

The application became abandoned for failure to pay the issue fee on or before October 1, 2004. Receipt is acknowledged of the requisite issue/publication fee on November 12, 2004.

The petition is GRANTED.

The application is being referred to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (703) 305-8283.

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,894,417	2005-05-17	10438429	2003-05-15	103637.010100

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	/Gerald L. Fellows/	Date (YYYY-MM-DD)	2009-07-21
Name	Gerald L. Fellows	Registration Number	36133

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. 6894417
Issue Date: May 17,2005
Application No. 10438429
Filed: May 15,2003
Attorney Docket No. P00644-US-01

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

This is a decision on the electronic petition, filed July 21,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of July 21,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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Paper No. 111904

William W. Haefliger
Suite 512
201 S. Lake Ave.
Pasadena, CA 91101

DEC 22 2004

In re Application of:
Galvez
Serial No.: 10/438,430
Filed: May 15, 2003

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(c), filed February 10, 2004, to make the above-identified application special.

Petitioner requests that the above-identified application be made special under the accelerated examination procedure set forth in the Manual of Patent Examining Procedure (M.P.E.P.) § 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 the inventor, James M. Galvez, stating that he is sixty-five (65) years of age or more.

Accordingly, the petition is GRANTED.

After allowance, this application will be given priority for printing. See M.P.E.P. § 1309.

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

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

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SCOTT M. GARRETT
MOTOROLA, INC.
LAW DEPARTMENT
8000 WEST SUNRISE BOULEVARD
FORT LAUDERDALE FL 33322

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OFFICE OF PETITIONS

In re Application of	:	
Sameh W. Tawadrous et al	:	
Application No. 10/438,441	:	DECISION GRANTING PETITION
Filed: May 15, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. CM03716J	:	

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

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Notice of Appeal and Appeal Brief; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of September 23, 2004, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 3662.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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SAND & SEBOLT
AEGIS TOWER, SUITE 1100
4940 MUNSON STREET, NW
CANTON OH 44718-3615

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OFFICE OF PETITIONS

In re Application of
Mark Rehme
Patent No. 6,854,757
Application Number: 10/438,460
Issue Date: February 15, 2005
Filing Date: May 14, 2003
Attorney Docket Number: 1501-G

DECISION ON PETITION

This is a decision on the petition for certificate of correction under 37 CFR 1.323 filed on May 19, 2005. The petition is properly treated under 37 CFR 3.81 (b) to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **Dismissed**.

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

Effective June 25, 2004, when a request to issue a patent to an assignee is filed after payment of the issue fee, a certificate of correction must be submitted as there is no time to process these request before a patent is issued. See 69 Fed. Reg. 29865 (May 26, 2004).

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

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

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

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

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

Petitioner has failed to provide item (D), the $130.00 processing fee.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :
Mark Rehme :
Application Number: 10/438,460 :
Patent: 6,854,757
Attorney Docket Number: 1501-G :
Filing Date: May 14, 2003 :
Issue Date: February 15, 2005 : DECISION ON PETITION
:

This is a decision on the petition to correct the name of the assignee under 37 CFR 1.183 filed on November 14, 2005. The petition is properly treated under 37 CFR 3.81 (b)[1] to correct the name of the assignees on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **Granted** to the extent outlined above.

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

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

Charlema R. Grant
Petitions Attorney
Office of Petitions

[1]See 69 Fed. Reg. 29865 (May 26, 2004).

UNITED STATES PATENT AND TRADEMARK OFFICE

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AMERSHAM HEALTH, INC.
101 CARNEGIE CENTER
PRINCETON, NJ 08540

COPY MAILED
SEP 27 2006
OFFICE OF PETITIONS

In re Application of	:
Zivko Djukic et al	: DECISION ON PETITION
Application No. 10/438,464	: UNDER 37 CFR 1.137(b)
Filed: May 15, 2003	:
Attorney Docket No. PM0234	:

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

The petition is **granted**.

This application became abandoned for failure to timely file corrected drawings on or before April 17, 2006, as required by the Notice Regarding Drawings, mailed February 17, 2006, which set a two month nonextendable period.

The petition satisfies the requirements for a grantable petition in that the reply in the form of corrected drawings (note attached Notice of Draftsperson's Patent Drawing Review), the petition fee of $1,500, and the required statement of unintentional delay have been submitted. Accordingly, the reply to the Notice of February 17, 2006 is accepted as having been unintentionally delayed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice of Draftsperson's Patent Drawing Review

Form PTO-948 (Rev. 06/03)
Application No. 10/438,464

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 05/01/2006 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, at 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)

____ Sectional 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)____

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)____

___ Figure legends are poor. Fig(s)____

___ 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 SON LAM

Date 09/07/2006

If you have questions, call (703) ~~305-8404~~ 305-0333 (EXT. 133)

Attachment to Paper No. ____

☆ U.S. GOVERNMENT PRINTING OFFICE: 2003-300-153

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JJGJr: 08-03

Paper No: 4

MYERS BIGEL
SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

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AUG 2 2 2003

OFFICE OF PETITIONS

In re Application of	:	
Hightower	:	
Application No. 10/438,475	:	ON PETITION
Filed: 15 May, 2003	:	
Attorney Docket No.: 9066-17IP	:	

This is a response to the paper filed on 6 August (and supplemented via FAX on 15 August), 2003, styled as a "Petition to Accord the Proper Filing Date," considered under 37 C.F.R. §1.10,[1]

---

[1]The regulations at 37 C.F.R. §1.10 provide:

§ 1.10 Filing of papers and fees by "Express Mail."

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) 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.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

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

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the

seeking to obtain a 15 May, 2003, filing date, rather than the 16 May, 2003, filing date presently accorded

The petition is **GRANTED**, and no fee has been charged.

NOTE: As a matter of information to Petitioner, it is noted that the papers filed in this matter as to this petition (and other items, as well) do not include telephone or other contact information for Petitioner.

BACKGROUND

The record indicates that:

- Petitioner D. Randall Ayers (Reg. No. 40,493) (Petitioner) alleges that this nonprovisional application was filed via Express Mail (US Postal Service (USPS) Express Mail No. EV193586800US) on 15 May, 2003;
- the Office thus far has accorded a filing date of 16 May, 2003;
- the instant petition is supported by:

  --the statement of Petitioner included in the petition;

---

correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

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

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

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

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

[48 Fed. Reg. 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 Fed. Reg. 4285, Jan. 31, 1983, paras. (a) & (c), 49 Fed. Reg. 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 Fed. Reg. 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

--a copy of what Petitioner represents to be a copy of the USPS Express Mail No. EV193586800US, bearing no "date in," but paired with a copy of the USPS (Internet) Track and Confirm statement for the package bearing USPS Express Mail No. EV193586800US evidencing a date of USPS receipt as "May 15, 2003[,]" at 5:34 p.m. in Raleigh, NC, and delivery to the Office on "May 16, 2003";

--a copy of the two- (2-) page application transmittal for the instant application bearing USPS Express Mail No. EV193586800US, (near the bottom of the second page), the title of the claimed invention (near the middle of the first page) and Petitioner's docket or case number at the top of the first page).

CONCLUSION

Therefore, as to the instant nonprovisional application, Application No. 10/438,475, the Office of Initial Patent Examination is specifically instructed to:

- assign a filing date of 15 May, 2003; and
- issue a filing receipt specifying the filing date as that of 15 May, 2003.

The instant application is being forwarded to OIPE to be handled as set forth above before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070222

DATE : February 22, 2007

TO SPE OF : ART UNIT 1714

SUBJECT : Request for Certificate of Correction on Patent No.: 7,148,270

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 requested changes are confined to the specification and, as best as can be determined, they appear to be essentially clarificatory in nature.

SPE: Vasu Jagannathan **Art Unit** 1714

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Paper No. 5

BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD MI 48075

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OCT 2 7 2003

OFFICE OF PETITIONS

In re Application of
Cahill, et al.
Application No. 10/438,500
Filed: May 15, 2003
Attorney Docket No. GSIL 0187 PUSP 1
For: METHOD AND SYSTEM FOR MARKING A WORKPIECE SUCH AS A SEMICONDUCTOR WAFER AND LASER MARKER FOR USE THEREIN

: 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 18, 2003).

The petition is granted.

Petitioners have shown that the non-signing inventors, Chris Nemets and Michael Woelki, have constructively 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 inventors were each mailed the application papers, including the specification, claims and drawings, but the inventors failed to respond to two requests that they sign the declaration. Petitioners have submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

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

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing 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 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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MICHAEL WOELKI
430 TAYLOR ROAD
SNOW MA 01775-1619

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OCT 27 2003

OFFICE OF PETITIONS

In re Application of
Cahill, et al.
Application No. 10/438,500
Filed: May 15, 2003
Attorney Docket No. GSIL 0187 PUSP 1
For: METHOD AND SYSTEM FOR MARKING A WORKPIECE SUCH AS A SEMICONDUCTOR WAFER AND LASER MARKER FOR USE THEREIN

LETTER

Dear Mr. Woelki:

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: BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD MI 48075

UNITED STATES PATENT AND TRADEMARK OFFICE

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MR. CHRIS NEMETS
890 TOWER COURT
CAMARILLO CA 93010

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OCT 2 7 2003

OFFICE OF PETITIONS

In re Application of
Cahill, et al.
Application No. 10/438,500
Filed: May 15, 2003
Attorney Docket No. GSIL 0187 PUSP 1
For: METHOD AND SYSTEM FOR MARKING A WORKPIECE SUCH AS A SEMICONDUCTOR WAFER AND LASER MARKER FOR USE THEREIN

LETTER

Dear Mr. Nemets:

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: BROOKS KUSHMAN P.C.
1000 TOWN CENTER
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MICHAEL WOELKI
430 TAYLOR ROAD
STOW MA 01775-1619

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OFFICE OF PETITIONS

In re Application of
Cahill, et al.
Application No. 10/438,500
Filed: May 15, 2003
Attorney Docket No. GSIL 0187 PUSP 1
For: METHOD AND SYSTEM FOR MARKING A WORKPIECE SUCH AS A SEMICONDUCTOR WAFER AND LASER MARKER FOR USE THEREIN

LETTER

Dear Mr. Woelki:

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: BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD MI 48075

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OCT 10 2006

OFFICE OF PETITIONS

Jason R. Kraus
DORSEY & WHITNEY LLP
Suite 1500
50 South Sixth Street
Minneapolis MN 55402-1498

In re Application of	:	
Bell, et al.	:	
Application No. 10/438,503	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. 6670.10	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 10, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to submit a proper reply to the Office communication mailed January 13, 2005. Notice of Abandonment was mailed May 17, 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 lacks requirement (1) set forth above. No proper reply to the Office communication January 13, 2005 has been submitted. Any renewed petition must be accompanied by a proper reply.

Petitioners are further advised that 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 $450.00 extension of time fee submitted with the instant petition was subsequent to the maximum extendable period for reply, this fee is unnecessary. Petitioners may request a refund of this fee by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for a refund.

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) 272-3205.

ALESIA M. BROWN
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Jason R. Kraus
DORSEY & WHITNEY LLP
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402-1498

In re Application of	:
Bell, et al.	: DECISION ON PETITION
Application No. 10/438,503	:
Filed: May 15, 2003	:
Docket No.: 6670.10	:

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed December 18, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Office action mailed January 13, 2005. The Notice 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 May 17, 2005.

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.

The request change of correspondence address has been entered into the record.

This application is being 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
Petitions Attorney
Office of Petitions

DO NOT SCAN! **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-14-06

TO SPE OF : ART UNIT 2823

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/438512 Patent No.: 6979872 B2

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

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

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

E. James
Certificates of Correction Branch
703-308-9390 ext. _____

Should the drawings be enter? Thanks

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: Drawings of 5/13/03 were accepted by the examiner and the drawings printed were part of an affidavit on 6/22/05.

[signature]
SPE

2823
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Director's Office
Office of Patent Publication

TIMOTHY R. KROGH
BRIDGESTONE/FIRESTONE, INC.
1200 FIRESTONE PARKWAY
AKRON, OH 44317-0001

In re Application of :
CHEN, ZHONG-REN, et al. :
Application No. 10/438,532 : **DECISION ON PETITION**
Filed: May 15, 2003 :
Attorney Docket No. P02079US1ABSJ FIRZ 2 0013 :

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent & Trademark (USPTO) on March 13, 2006.

The petition is **DISMISSED**.

The above-identified application was held abandoned for applicant's failure to timely pay the issue fee, as required in the Notice of Allowance and Fee(s) Due, mailed March 18, 2005. The Notice of Abandonment, mailed on January 20, 2006 indicates that the submitted fee of $300 is insufficient. A balance of $1,400 is due.

The Office acknowledges receipt of Part B – Fee(s) Transmittal via facsimile transmission on April 26, 2005, authorizing that the Issue Fee, Publication fee, and Advance Order Copies be charged to Deposit Account No. 06-0925. Unfortunately, when an attempt was made by the Office of Finance to charge the fees, there was an insufficient fund in the Deposit Account to charge all fees required. The Publication fee in the amount of $300 and $6 for two (2) Advance Order Copies were the only fees charged. Balance amount $643, Recording date April 27, 2005

37 CFR 1.25 (a) and (b), which states in part:

> 1.25(a) ...An amount sufficient to cover all fee, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted."
>
> 1.25 (b) ...An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

Submitted with the petition, Petitioner has included a duplicate copy of the Fee(s) Transmittal, Form PTOL-85B. The issue fee of $1,400, $300 for Advance Order Copies, and $6 for two (2) Advance Order Copies were charged to Deposit Account No. 06-0925 on March 14, 2006.

However, in light of the non-compliance with 37 CFR 1.25, the holding of abandonment cannot be withdrawn.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website http://www.uspto.gov)

- Under 37 CFR 1.137(a), a petition for the revival of an ***unavoidably*** abandoned application
- Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally*** abandoned application

Further inquires with respect to filing a petition under 37 CFR § 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

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

Telephone inquires concerning this decision matter may be directed to the undersigned at 703 308-9250 Ext. 137.

Thomas E. Hawkins

Thomas E. Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publications

Enclosure: Copy of Deposit Account Maintenance Record

UNITED STATES PATENT AND TRADEMARK OFFICE

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

TIMOTHY R. KROGH
BRIDGESTONE/FIRESTONE, INC.
1200 FIRESTONE PARKWAY
AKRON, OH 44317-0001

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OFFICE OF PETITIONS

In re Application of	:	
Chen et al.	:	
Application No. 10/438,532	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. P02079US1A	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 24, 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 previously submitted Issue Fee Transmittal with payment of the issue/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.

Petitioner was inadvertently charged the $300.00 publication fee, along with the $6.00 advanced copy order, twice. Accordingly, $306.00 will be credited to petitioner's deposit account as authorized.

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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United States Patent and Trademark Office
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JAN - 5 2006

LAWSON & WEITZEN, LLP
88 BLACK FALCON AVENUE
SUITE 345
BOSTON, MA 02210

In re Application of	:
Jack L. Strominger et al	:
Serial No.: 10/438,538	: PETITION DECISION
Filed: May 15, 2003	:
Attorney Docket No.: 36372-013	:

This is in response to the petition under 37 CFR 1.181, filed October 14, 2005, requesting withdrawal of the Finality of the last Office action.

BACKGROUND

A review of the file history shows that following a restriction requirement in the form of an election of species, mailed May 18, 2004, and election, made on October 27, 2004, the examiner mailed to applicants a first Office action on March 15, 2005, acting on claims 1-6, 9-13, 15, 18-21 and 23-28 directed to SEQ ID NO: 15 and, in view of no prior art being found, also SEQ ID NOs: 6, 7, 10-18, 21, 26, 28-29, 32-33, 35-36 and 54. Claims 14, 16 and 22 were held to be non-elected.

Claims 1-6, 9-13, 15, 18-21 and 23-28 were rejected under 35 U.S.C. 112, first paragraph, as lacking written description in the specification, and as containing subject matter not described in the specification as to how to make or use the invention. Claims 9, 12 and 21-24 were rejected under 35 U.S.C. 112, second paragraph, as indefinite. Claims 1-6, 9-12, 18-21 and 23-26 were rejected under 35 U.S.C. 102(b) as anticipated by Teitelbaum et al as evidenced by Harlow and Lane, US 6,800,287 or US 2002/0055466 and admissions in the specification. Claims 1-6, 9-11, 18-21 and 23-26 were rejected under 35 U.S.C. 102(b) as anticipated by Johnson et al as evidenced by Harlow and Lane, Teitelbaum et al and US 6,800,287 or US 2002/0055466 and admissions in the specification. Claims 1-6, 9-11, 18-21 and 23-26 were rejected under 35 U.S.C. 102(b) as anticipated by Bornstein et al as evidenced by Harlow and Lane and US 6,800,287 or US 2002/0055466 and admissions in the specification. Claims 1-6, 9-12, 18-21 and 23-26 were rejected under 35 U.S.C. 102(b) as anticipated by 6,800,287 as evidenced by Harlow and Lane and admissions in the specification. Claims 1-6, 9-12, 18-21 and 23-26 were rejected under 35 U.S.C. 102(e) as anticipated by US 2002/0055466 as evidenced by Harlow and Lane. Claims 1-6, 9-11, 18-21 and 23-26 were rejected under 35 U.S.C. 102(a) as anticipated by Comi as evidenced by Harlow and Lane and US 6,800,287 or US 2002/0055466 and admissions in the specification. Claims 1-6, 9-11, 18-21 and 23-26 were rejected under 35 U.S.C. 102(a) as

anticipated by Fridkis-Hareli et al as evidenced by Harlow and Lane and admissions in the specification. Claims 1-5, 9-11, 18-21, 23 and 25-26 were provisionally rejected for obvious double patenting over SN 10/406,783 and claim 12 over 10/406,783 in view of WO 92/02543. Claims 1-6, 9-12, 18-21 and 22-26 were provisionally rejected for obvious double patenting over 10/365,844. A sequence compliance letter accompanied the Office action.

Applicants replied on June 15, 2005, which reply was found to be non-compliant by letter of June 29, 2005. A compliant amendment was filed on July 7, 2005, in which claims 1-12, 17-21 and 23-26 were canceled. Applicants replied to each ground of rejection appropriately.

The examiner mailed a Final Office action to applicants on September 22, 2005. In view of applicants' remarks, the examiner extended examination to claims 14, 16 and 22, previously withdrawn. The examiner set forth a new rejection of claims 13-16, 22 and 27-28 under 35 U.S.C. 112, first paragraph for lack of written description as well as how to make and use the invention. Claim 22 was rejected under 35 U.S.C. 112, second paragraph, for indefiniteness. Claim 22 was further rejected under 35 U.S.C. 102(b) as anticipated by Johnson et al or Teitelbaum et al or Bornstein et al or Teitelbaum et al (PNAS reference), each as evidenced by US 6,800,287, US 2002/0055466, Harlow and Lane and admissions in the specification. Claim 22 was rejected under 35 U.S.C. 102(e) as anticipated by US 6,800,287 as evidenced by US 2002/0055466, Harlow and Lane and admissions in the specification. Claim 22 was rejected under 35 U.S.C. 102(e) as anticipated by US 2002/0055466 as evidenced by US 6,800,257, Harlow and Lane and admissions in the specification. Claim 22 was rejected under 35 U.S.C. 102(a) as anticipated by Comi as evidenced by Harlow and Lane, US 6,800,257, US 2002/0055466 and admissions in the specification. Claim 22 was rejected under 35 U.S.C. (a) as anticipated by Fridkis-Hereli et al as evidenced by Harlow and Lane and admissions in the specification. Claims 13-16 and 28 were provisionally rejected under 35 U.S.C. 101 for double patenting over SN 10/365,844. Claims 13-16, 22 and 27-28 were provisionally rejected for obvious double patenting over SN 10/365,844 in view of WO 92/02543. A notice for sequence compliance accompanied the Office action.

This petition was filed October 14, 2005, to withdraw the finality of the Office action. A reply to the Office action was filed November 22, 2005, but has not been reviewed by the examiner pending this petition decision.

DISCUSSION

Applicants state that claims 14, 16 and 22 were previously withdrawn by the examiner from consideration and were first examined on their merits in the last Office action which was made Final. The Office action sets forth a new rejection under 35 U.S.C. 101 which was not previously set forth for any claim. Applicants complain that they have not had an opportunity to properly respond to this or any other rejection of these claims and finality is therefor improper. Applicants are correct that claims previously withdrawn from consideration by restriction requirement and now acted on for the first time cannot be finally rejected.

Applicants further state that the rejections over SN 10/365,844 are improper as this application has been abandoned (May 8, 2003) and the examiner was previously informed of such

abandonment. Applicants are correct that a rejection based on an unpublished abandoned application is improper. The examiner is directed to withdraw any rejections based on abandoned SN 10/365,844.

In view of the above considerations the previous Office action is considered to be a non-Final Office action and the reply filed November 22, 2005, will be considered a reply to a non-Final Office action on which the examiner will act accordingly.

DECISION

The petition is **GRANTED.**

The application will be forwarded to the examiner of further consideration not inconsistent with this decision.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6

JERRY K. MUELLER, JR.
MUELLER AND SMITH, LPA
7700 RIVERS EDGE DRIVE
COLUMBUS, OH 43235

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JUL 0 1 2004
OFFICE OF PETITIONS

In re Application of :
Dominic A. Cataldo, et al. :
Application No. 10/438,559 :
Filed: May 15, 2003 :
Attorney Docket No. GGD 2-005 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 1, 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 22, 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 23, 2003.

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), it will be interpreted as the required statement. Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (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

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. 20050302

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
767 THIRD AVENUE
25TH FLOOR
NEW YORK NY 10017-2023

MAR 17 2005

In re Application of:	:	
Haruyuki TSUJI	:	PETITION FOR CORRECTION OF
Serial No.: 10/438,561	:	INVENTORSHIP
Filed: May 15, 2003	:	UNDER 37 CFR § 1.48(b)
Attorney Docket No.: 03287/LH	:	

This is a decision on the petition filed October 28, 2004 to correct inventorship under 37 CFR 1.48(b).

The petition is GRANTED.

In view of the papers filed October 28, 2004, the inventorship in this nonprovisional application has been changed by the deletion of the inventors:

Yasutoshi Kitahara Katsuyuki Hasimoto Yaunori Ikeno

Shunsuke Kurata Masahiko Yazawa

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

Gregory J. Toatley, Jr.
Supervisory Patent Examiner,
Art Unit 2877

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

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MAR 1 3 2006

OFFICE OF PETITIONS

In re Application of	:	
David Gerald Farber et al	:	
Application No. 10/438,566	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. TI-33397.1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 15, 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 November 15, 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 May 16, 2005 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed October 2, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. A three (3) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on May 16, 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 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 November 15, 2004 is accepted as having been unintentionally delay.

Pursuant to petitioner's authorization, Deposit Account No. 20-0668 was charged $1,500.00 for the petition to revive an unintentionally abandoned application.

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

This matter is being referred to Technology Center AU 2813.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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OFFICE OF PETITIONS

STANDLEY LAW GROUP LLP
495 METRO PLACE SOUTH
SUITE 210
DUBLIN OH 43017

In re Patent No. 6,840,104	:	
Issue Date: January 11, 2005	:	
Application No. 10/438,568	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. SHI 1823-005.	:	

This is a decision on the petition filed December 6, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (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.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DANN DORFMAN HERRELL & SKILLMAN
1601 MARKET STREET, SUITE 2400
PHILADELPHIA, PA 19103-2307

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OFFICE OF PETITIONS

In re Application of :
Heidi Beth Smedi :
Application No. 10/438,569 : ON PETITION
Filed: May 15, 2003 :
Attorney Docket No. 3881-P02908US01 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 26, 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 November 16, 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 February 17, 2005.

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 a continuing application No. 29/230,712.

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

This matter is being referred to Files Repository.

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

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EDWARD P. DUTKIEWICZ, ESQ.
EDWARD P. DUTKIEWICZ, P.A.
640 DOUGLAS AVENUE
DUNEDIN, FL 34698-7001

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OFFICE OF PETITIONS

In re Application of :
D. Robert Hay et al :
Application No. 10/438,571 : ON PETITION
Filed: May 15, 2003 :
Attorney Docket No. HD70/01 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 8, 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 non-final Office action mailed May 3, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 4, 2004.

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.

The fee for a petition to revive under the unintentional standard of 37 CFR 1.137(b) for a small

entity is $685.00. With the present petition, petitioner has only submitted $665.00. Accordingly, a consideration on the merits of the present petition cannot be made until the $20.00 fee deficiency is submitted to the Office.

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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EDWARD P. DUTKIEWICZ, ESQ.
EDWARD P. DUTKIEWICZ, P.A.
640 DOUGLAS AVENUE
DUNEDIN, FL 34698-7001

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OFFICE OF PETITIONS

In re Application of	:	
D. Robert Hay et al	:	
Application No. 10/438,571	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. HD70/01	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed February 11, 2005, to revive the above-identified application.

The petition is **GRANTED**.

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

This matter is being referred to Technology Center AU 2856.

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

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ANDREW S. MCCONNELL
BOYLE, FREDRICKSON, NEWHOLM, STEIN & GRATZ, S.C.
SUITE 1030
250 E. WISCONSIN AVENUE
MILWAUKEE, WI 53202

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SEP 14 2004

OFFICE OF PETITIONS

In re Application of	:	ON PETITION
Sheldon P. Carr, et al.	:	
Application No. 10/438,577	:	
Filed: May 15, 2003	:	
Attorney Docket No. 698.004	:	

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-5594.

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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PAUL D. YASGER
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK IL 60064-6008

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SEP 1 0 2008

OFFICE OF PETITIONS

In re Application of	:	
Lynne E. Rueter, et al.	:	
Application No. 10/438,595	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. 6936.US.02	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 16, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 3, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 4, 2007. The Notice of Abandonment was mailed October 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 an amendment; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay.

Note that the Request for Continued Examination filed herewith petition will not be considered because a RCE cannot be filed until such time as the Office action has been made final or prosecution is closed. The RCE is deemed unnecessary and the $810 RCE fee will be credited back to your deposit account.

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.

The application file is being referred to Technology Center AU 1617 for appropriate action on the concurrently filed amendment.

Chris Bottorff

Chris Bottorff
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Dahl & Osterloth, LLP
Suite 3405
555 17th Street
Denver CO 80202-3937

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OCT 19 2004

OFFICE OF PETITIONS

Applicant: Taube
Appl. No.: 10/438,597
Filing Date: May 15, 2003
Title: METHOD AND APPARATUS FOR PRODUCING NANO-PARTICLES OF MOLYBDENUM OXIDE
Attorney Docket No.: PHELPS US-16(e)
Pub. No.: US 2004 0013602A1
Pub. Date: January 22, 2004

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on March 5, 2004.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains mistakes in the abstract, specification and claim 20:

- In lines 2-3 of the abstract, "defiming" should read "defining."
- In the specification,
  - Page 2 in paragraph 0020, "nano-particle material- 12" should not have a "-" after "material."
  - Page 3, in paragraph 0025, "largersized" should read "larger sized."
  - Page 4 in paragraph 0032, there should be no dash in "with-the."
  - Page 5 in paragraph 0041, "4 nun" should be "4 mm."
  - Page 6 in paragraph 0052, "socalled" should read "so-called."
  - Page 7 in paragraph 0055, there should be no "." in "ultimately. captured."
  - Page 7 in paragraph 0057, "asmeasured" should read "as measured."
  - Page 8 in paragraph 0062, "may be define" should read "may define."
  - Page 9 in paragraph 0071, "thermocoupled" should read "thermocouple."
  - Page 9 in paragraph 0075, "nild steel alloys" should read "mild steel alloys."
  - Page 9 in paragraph 0076, fier assembly 140" should read "filter assembly 140"
  - Page 10 in paragraph 0081, "J shaped" should read "J-shaped."
- In claim 20, "1093-1260° C" should read "1093°-1260° C."

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1] The instant request does not identify a material mistake in the publication made by the Office:

The printing errors in the abstract wherein "defining" is spelled as "defiming," and the printing errors in the specification on page 2 in paragraph 0020, page 3, in paragraph 0025, page 4 in paragraph 0032, page 6 in paragraph 0052, page 7 in paragraph 0055, Page 7 in paragraph 0057 and page 10 in paragraph 0081, wherein extra or missing periods, dashes or spaces are all Office errors, but they are minor typographical errors, which are clearly understandable. These mistake are clearly typographical errors, which do not affect the public's ability to appreciate the technical disclosure 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.

With respect to the typographical error in printing "filter assembly 140" as "fier assembly140", the correct text is written in the same paragraph and the element is clearly identified with the element numeral. With respect to the misprinting of "may define" as "may be define"; "thermocouple" as "thermocoupled"; "mild steel alloy" as "nild steel alloy" and "1093°-1260° C" as "1093°-1260° C" these are all minor typographical error, which are clearly understandable from reading the specification and sentence in which the terms are used, as words and phrases are not read in a vacuum. The errors 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.

With respect to the error on page 5, paragraph 41, wherein "diameter of about 4 mm" is misprinted as "diameter of about 4nun", this is clearly a typographical error. The claims do not recite this limitation, thus it does not affect the determination of the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent and it is not essential to the practice of the invention. Furthermore, this is not a material error since the Image File Wrapper (IFW) for this application is available to the public, as of July 31, 2004.

All mistakes cited by applicant 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.

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

---

[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).

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 or request for reconsideration of this decision, should be addressed as follows:

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

By facsimile: 703-872-9306

The application will be examined in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NOV 06 2009

OFFICE OF PETITIONS

Alleman, Hall, McCoy, Russell
& Tuttle, LLP
806 SW Broadway
Suite 600
Portland, OR 97205-3335

In re Patent No. 6,935,754	:	
Issue Date: August 30, 2005	:	
Application No. 10/438,612	:	ON PETITION
Filed: May 14, 2003	:	
Attorney Docket No. IFC 312	:	

This is a decision on the petition filed September 23, 2009, under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

The request is **GRANTED**.

Petitioner states that the correct assignee name is "InFocus Corporation" and that the incorrect assignee's name was submitted on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the omitted assignees on the front page of the Letters Patent in the patent issued from the application.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that "InFocus Corporation" is the assignee of record. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed in a patent application.

Inquiries concerning this decision should be directed to the Kimberly Inabinet at (571) 272-4618. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction in a patented application.

Carl Friedman
Petitions Examiner
Office of Petitions

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MARK LEVY & ASSOCIATES, PLLC
PRESS BUILDING, SUITE 902
19 CHENANGO STREET
BINGHAMTON, NY 13901

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DEC 20 2004

OFFICE OF PETITIONS

In re Application of
Jeffrey Hosier, et al.
Application No. 10/438,627
Filed: May 16, 2003
Attorney Docket No. H-553

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed October 25, 2004.

The application became abandoned for failure to pay the issue fee on or before September 23, 2004. Receipt is acknowledged of the requisite issue fee on September 27, 2004.

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

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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TEXAS INSTRUMENTS INCORPORATED
P.O. BOX 655474 MS 3999
DALLAS, TX 75265

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FEB 23 2005

OFFICE OF PETITIONS

In re Application of :
Richard L. Guldi et al :
Application No. 10/438,651 :
Filed: May 15, 2003 :
Attorney Docket No. TI-35540 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 7, 2005, to revive the above-identified application.

The petition is **GRANTED**.

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

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

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

This file is being forwarded to Technology Center AU 2812 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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HAYES SOLOWAY, P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718

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SEP 2 5 2007

OFFICE OF PETITIONS

In re Application of	:	
Richard J.H. Wilson, et al.	:	
Application No. 10/438,656	:	DECISION GRANTING PETITION
Filed: May 15, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. STEINER 02.01	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 19, 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 5, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to April Wise at (571) 272-1642.

This application is being referred to Technology Center AU 1655 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Frances Hicks

Frances M. Hicks
Petitions Examiner
Office of Petitions

---

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6/9/08 Paper No.: —

TO SPE OF : ART UNIT 1655

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/438656 Patent No: 7361374 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: _____

Terry A McKelvey
TERRY MCKELVEY, PH.D.
SUPERVISORY PATENT EXAMINER
SPE

1655
Art Unit

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

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Paper No.

HEWLETT PACKARD COMPANY
P O BOX 272400
3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS CO 80527-2400

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APR 29 2008

OFFICE OF PETITIONS

In re Application of	:	
Pavlov et al.	:	DECISION ON
Application No. 10/438,659	:	PETITION
Filed: May 15, 2003	:	
Atty Docket No. 200308728-1	:	

This is a decision on the "PETITION TO ACCEPT DECLARATION" filed September 20, 2007, which is being treated as a § 1.183 waiver of § 1.131's requirement that all of the inventors sign the declaration of prior inventorship[1].

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

The above-identified application was filed on May 15, 2003, with a 37 CFR 1.63 declaration signed by both joint inventors. On April 23, 2007, applicants filed a § 1.131 declaration executed by both joint inventors. For reasons stated therein, by Office action mailed July 18, 2007, the examiner considered the § 1.131 declaration but determined that it was ineffective to overcome the reference. In response, inter alia, applicants filed a 37 CFR 1.131 declaration executed by joint inventor Mao, but not by joint inventor Pavlov. Applicants have filed the instant petition to have the 37 CFR 1.131 declaration accepted without the signature of inventor Pavlov. Applicants state that despite diligent efforts, inventor Pavlov cannot be found or reached.

[1]. Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration.

37 CFR 1.131 states, in pertinent part:

> When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicants do not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that joint inventor Pavlov sign the § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

On instant petition, applicants have set forth the steps taken to obtain joint inventor Pavlov's signature on the § 1.131 declaration. By declaration of facts of patent attorney Edward Brooks, applicants have shown that a *bona fide* effort was made to reach or locate inventor Pavlov to present the § 1.131 declaration and supporting documentation. Evidence of a mailing of the declaration and supporting documentation to inventor Pavlov by certified mail is included. There is no indication that the last known address is incorrect. Further, inventor Pavlov previously signed the § 1.131 declaration found ineffective by the examiner. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation, warranting waiver of the rules.

The petition is granted to the extent that the 37 CFR 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied. This is not a decision on the merits of the declaration.

The petition included specific authorization for a $200 petition fee and authorization to charge any deficiency to a Deposit Account. The $200 deficiency in the petition fee under 37 CFR 1.17(f) of $400 required for consideration of this petition under § 1.183 has been charged to Deposit Account No. 08-2025, as authorized.

The application is being forwarded to Technology Center 2625 for consideration on the merits of the reply and the 37 CFR 1.131 declaration, filed September 20, 2007, including consideration in light of the request for continued examination filed October 9, 2007.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 0412

DATE : 9-30-05

RECEIVED
APR 13 2006
TC 1700

TO SPE OF : ART UNIT 1725

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

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

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-922
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

1745
Art Unit

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent 6,828,526 B1	)	Serial No. 10/438,675
Issued December 7, 2004	)	Filed May 15, 2003
Israel Stol et al.	)	Group Art Unit 1725
Confirmation No.: 6553	)	Atty. No. 02-3228 [370023-00053]
Gas Metal Buried Arc Welding of Lap-Penetration Joints	)	

Certificate
SEP 1 5 2005
of Correction

Request for Certificate of Correction

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450 on September 9, 2005.

Gary P. Topolosky - Reg. No. 31888
Date of Signature: on September 9, 2005

Commissioner for Patents
Attn: Certificate of Correction Branch
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please issue a Certificate of Correction for the above-identified patent, in accordance with the procedure for handling certificates of correction as announced in the May 6, 1969 issue of the Official Gazette, as modified by the notice dated January 24, 1975 which appeared in the February 18, 1985 issue of the Official Gazette. The correction is necessitated by errors made by the U. S. Patent and Trademark Office.

The errors and the corresponding location of the same appear at the following locations in the issued patent and the amended application as shown in the attached PTO/SB/44.

Respectfully submitted,

Gary P. Topolosky
Attorney for Applicants
Reg. No. 31888
Phone 724-337-2772

08840
08840
PATENT TRADEMARK OFFICE

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,828,526 B1

APPLICATION NO.: 10/438,675

ISSUE DATE : December 7, 2004

INVENTOR(S) : Israel Stol et al.

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

Patent Location Application Correction

Column 5, The order of Claims 5 and 6 are reversed as presented in patent application.

Issued Claim 6 (which is claim 5 from the allowed application) should read:

The method of claim 1, wherein the first and second components are made from materials selected from the group consisting of steel, stainless steel, titanium and alloys thereof and copper and alloys thereof.

The phrase, "and copper and alloys thereof" was also omitted from the above claim when typed by the Patent Office.

Present Claim 5 (which is claim 6 from the allowed application) reads fine except for the numbering. It stays as:

The method of claim 4, wherein the first component and second components are each selected from the group consisting of a sheet product, a casting, an extrusion or a forging.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Gary P. Topolosky, Esq.
Eckert Seamans Cherin & Mellott, LLC at ATC
100 Technical Drive
Alcoa Center, PA 15069-0001

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

2005

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BINGHAM, MCCUTCHEN LLP
THREE EMBARCADERO, SUITE 1800
SAN FRANCISCO CA 94111-4067

In re Application of
Edward J. Seppi
Application No. 10/438,684
Filed: May 14, 2003
For: **IMAGING APPARATUS AND METHOD WITH EVENT SENSITIVE PHOTON DETECTION**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition to make special filed August 3, 2004 pursuant to MPEP §708.02 (IV), applicant's age.

A petition to make special under MPEP §708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.

The petition includes a statement by the named inventor attesting that Mr. Seppi is over 65 years of age.

Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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LADAS & PARRY
5670 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES CA 90036-5679

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SEP 21 2005

OFFICE OF PETITIONS

In re Patent No. 6,897,535 :
Chow et al. :
Issue Date: May 24, 2005 :
Application No. 10/438,689 :
For: INTEGRATED CIRCUIT WITH REVERSE ENGINEERING PROTECTION

DECISION ON PETITION UNDER: 37 CFR 1.183

This is a decision on the "Petition to Correct the Assignee under 37 CFR 1.183," filed July 7, 2005.

The petition is dismissed. The request to issue a certificate of correction to correct the name of the assignee is granted.

Petitioner has shown that an assignment was recorded before the issuance of the patent, and that as a result of the recorded assignment ownership of the patent was in the name of HRL Laboratories, LLC and Raytheon Company. In accordance with 37 CFR 3.81(b), after payment of the issue fee, "[a]ny 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." As petition has complied with 37 CFR 3.81(b), issuance of the requested certificate of correction is appropriate.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-7744.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 8

PEACOCK MYERS & ADAMS P.C.
P.O. BOX 26927
ALBUQUERQUE, NM 87125-6927

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SEP 0 8 2003

OFFICE OF PETITIONS

In re Application of :
Hendrik Antonius Hoogland :
Application No. 10/438,695 : NOTICE
Filed: May 15, 2003 :
Attorney Docket No. 31310-1002 :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Office of Initial Patent Examination.

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

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

FULWIDER PATTON LEE & UTECHT, LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE
TENTH FLOOR
LOS ANGELES, CA 90045

COPY MAILED

JAN 15 2004

OFFICE OF PETITIONS

In re Application of
John Raybuck
Application No. 10/438,702
Filed: May 14, 2003
For: SELF-SEALING MALE CONNECTOR

DECISION GRANTING PETITION
UNDER 37 CFR 1.47(b)

This is in response to the "Petition Under 37 CFR 1.47(b)," filed December 29, 2003.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Thomas A. Runk establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but refused the request that he sign the declaration. In addition, petitioner has shown that ALARIS Medical Systems, Inc. has a proprietary interest in the above-identified application with the copy of the "Confidentiality and Invention Assignment Agreement" showing that the inventor has an obligation to assign any patent rights to ALARIS Medical Systems. The petition fee will be charged to petitioner's deposit account no. 06-2425. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and demonstrated that petitioner has shown that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b).

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703)306-9200

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
www.uspto.gov

JOHN RAYBUCK
1368 KELTON AVENUE
LOS ANGELES, CA 90024

In re Application of
John Raybuck
Application No. 10/438,702
Filed: May 14, 2003
For: SELF-SEALING MALE CONNECTOR

COPY MAILED

JAN 1 5 2004

OFFICE OF PETITIONS

Dear JOHN RAYBUCK:

You are named as the sole inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as the sole inventor.

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703)306-9200. Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

FULWIDER PATTON LEE & UTECHT, LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE
TENTH FLOOR
LOS ANGELES, CA 90045

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JUN 7 - 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of	:	
Polanek et al.	:	
Application No. 10/438,712	:	DECISION ON PETITION
Filed: May 15, 2003	:	TO MAKE SPECIAL
For: SYSTEM HANDLING VIDEO, CONTROL	:	
SIGNALS AND POWER	:	

This is a decision on the petition under 37 C.F.R. §1.102 to make special filed May 6, 2005 which is considered as pursuant to MPEP §708.02 (IV), applicant's age.

A petition to make special under MPEP §708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.

The petition includes a declaration that Mr. Edward L. Polanek is 65 years of age.

Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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TOWNSEND AND TOWNSEND AND CREW, LLP/PIXAR
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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JUL 2 0 2007

OFFICE OF PETITIONS

In re Application of	:	
John Anderson et al.	:	
Application No. 10/438,732	:	DECISION ON PETITION
Filed: May 14, 2003	:	TO WITHDRAW
Attorney Docket No. 021751-000500US	:	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, 2007.

The request is **NOT APPROVED**.

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

The request cannot be approved because customer number 68218 was not given power attorney. Resubmit the withdrawal of attorney using the correct customer number (20350).

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.

Terri Williams
Terri Williams
Petitions Examiner
Office of Petitions

cc: **Jonathan Hollander**
Law Office of Jonathan Hollander PC
73 Summer Street
Suite 301
San Francisco, CA 94103-3979

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

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AUG 0 9 2007

OFFICE OF PETITIONS

In re Application of	:	
John Anderson et al.	:	
Application No. 10/438,748	:	DECISION ON PETITION
Filed: May 14, 2003	:	TO WITHDRAW
Attorney Docket No. 021751-000200US	:	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 20, 2007.

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

A review of the file record indicates that the power of attorney to Stephen Y. Pang and all attorneys/agents associated with customer number 68218 of record has been revoked by the assignee of the patent application on June 28, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

There is no outstanding office action at this time.

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 Kimberly Inabinet at 571-272- 4618.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Jonathan M. Hollander
Pixar – Hollander
73 Sumner Street
Suite 301
San Francisco, CA 94103

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CAROL G. MINTZ
CONLEY ROSE, P.C.
P.O. BOX 3267
HOUSTON, TX 77253-3267

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SEP 21 2006

OFFICE OF PETITIONS

In re Patent No. 6,964,642 :
Issue Date: November 15, 2005 :
Application No. 10/438,751 : NOTICE
Filed: May 15, 2003 :
Attorney Docket No. 2286-00300

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JOSEPH V TASSONE
DAYCO PRODUCTS
1 PRESTIGE PLACE
MIAMISBURG OH 45342

COPY MAILED

DEC 0 4 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Swope :
Application No. 10/438,755 :
Filed: May 15, 2003 :
Title: Low Modules Belt For Automotive :
Applications

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed October 12, 2006.

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

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This above-identified application became abandoned for failure to file a response to a final Office Action which was mailed on January 19, 2006. The Final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on April 20, 2006. A Notice of Abandonment was mailed on September 20, 2006.

Petitioner states a review of the image file wrapper shows that the Final Office Action was returned to the Office and never resent. Therefore the action was never received by applicant.

Petitioner's argument has been considered but deemed to be unpersuasive. A review of the record shows that the Final Office Action was mailed to the correspondence address of record in Miamisburg, Ohio. The record is not clear that the Notice was not

received because petitioner is not an attorney of record, nor is the address provided on the petition the correspondence address of record. Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence allow for withdrawing the holding of abandonment.

To the extent petitioner contends a change of correspondence and/or a power of attorney was submitted, evidence of prior submission should be submitted.

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

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Jeffrey C. Metzcar
Thompson Hine LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JOSEPH V TASSONE
DAYCO PRODUCTS
1 PRESTIGE PLACE
MIAMISBURG OH 45342

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MAR 19 2007

OFFICE OF PETITIONS

ON PETITION

In re Application of
Swope
Application No. 10/438,755
Filed: May 15, 2003
Title: Low Modules Belt For Automotive Applications

This is a decision on the petition under 37 CFR §1.181(a) to withdraw the holding of abandonment, filed January 29, 2007.

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

This above-identified application became abandoned for failure to file a response to a final Office Action which was mailed on January 19, 2006. The Final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on April 20, 2006. A Notice of Abandonment was mailed on September 20, 2006.

Petitioner asserts that the final Office Action mailed on January 19, 2006 was never received. A review of the record indicates the non-final Office Action while addressed properly was returned to the Office for unknown reasons. Based upon petitioner's attestation that he continues to receive mail at the correspondence address of record and the irregularity in the mailing of the final Office Action, it is determined petitioner failed to receive the Office communication.

This application is being forwarded to Art Unit 3682 for re-mailing of the final Office Action. The three month extendable time period for reply will be set to run from the mailing date of the new Office Communication.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/438,776	05/15/2003	1617	1024	SMI-008.02		28	2

CONFIRMATION NO. 4778

CORRECTED FILING RECEIPT

OC000000012095636

25181
FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON, MA 02110

Date Mailed: 03/12/2004

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)

Isa Odidi, Toronto, CANADA;
Amina Odidi, Toronto, CANADA;

Domestic Priority data as claimed by applicant

This application is a CON of 09/169,409 10/09/1998 PAT 6,607,751
which claims benefit of 60/061,501 10/10/1997

Foreign Applications

If Required, Foreign Filing License Granted: 07/30/2003

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Novel controlled release delivery device for pharmaceutical agents incorporating microbial polysaccharide gum

Preliminary Class
424

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

GRANTED

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

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

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

NOT GRANTED

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

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Jeffrey C. Hood
Meyertons, Hood, Kivlin, Kowert & Goetzel
P.O. Box 398
Austin, TX 78767

Mail Date: 04/21/2010

Applicant	: Louis R. Murphy	: DECISION ON REQUEST FOR
Patent Number	: 7647578	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/438,781	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/15/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1729** 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 : **11/14/2005**

TO SPE OF : ART UNIT **3700(3754)**

SUBJECT : Request for Certificate of Correction on Patent No.: **6,837,398**

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.

Please make decision on 2nd req. for reprint of claims ASAP!

Ernest C. White, LIE305-8339
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:

_____

_____

_____

_____

_____

Michael Y Mar
SPE

3754
Art Unit

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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112-3800

MAIL

MAR - 2 2007

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of	:	
Kazuhiro Saito et al	:	DECISION ON REQUEST TO
Application No. 10/438808	:	PARTICIPATE IN PATENT
Filed: May 16, 2003	:	PROSECUTION HIGHWAY
Attorney Docket No. 00862.023044	:	PILOT PROGRAM AND PETITION
	:	TO MAKE SPECIAL UNDER
	:	37 CFR 1.102(d)

This is a decision on the request to participate in the Patent Prosecution Highway (PPH) pilot program and the petition under 37 CFR 1.102(d), filed February 26, 2007, to make the above-identified application special.

The request and petition are **GRANTED**.

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

(1) The U.S. application must validly claim priority under 35 U.S.C. 119(a) to one or more applications filed in the JPO;
(2) Applicant must submit a copy of the allowable/patentable claim(s) from the JPO application(s) along with an English translation thereof and a statement that the English translation is accurate;
(3) All the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the JPO application(s);
(4) Examination of the U.S. application has not begun;
(5) Applicant must submit a copy of all the office actions from each of the JPO application(s) containing the allowable/patentable claim(s) along with an English translation thereof and a statement that the English translation is accurate;
(6) Applicant must submit an IDS listing the documents cited by the JPO examiner in the JPO office action along with copies of documents except U.S. patents or U.S. patent application publications; and
(7) The required petition fee under 37 CFR 1.17(h).

The request to participate in the PPH pilot program and petition comply with the above requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to John Peng at 571-272-7272.

All other inquiries concerning the examination or status of the application should be directed to Patent Application Information Retrieval (PAIR) system.

The application is being forwarded to the examiner for action on the merits commensurate with this decision.

John Peng
TC 2600
Quality Assurance Specialist

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

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OCT 13 2006
OFFICE OF PETITIONS

In re Application of :
Kobayashi, et al. :
Application No. 10/438,815 : ON PETITION
Filed: May 16, 2003 :
Attorney Docket No. 500.38297CX1 :
For: DATA PROCESSING METHOD AND SYSTEM, PROGRAM FOR REALIZING THE METHOD, AND COMPUTER READABLE STORAGE MEDIUM STRONG THE PROGRAM

This is a decision on the petition under 37 CFR 1.181, filed August 8, 2006, requesting that the Office withdraw the holding of abandonment of the above-identified application.

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

This application was held abandoned for failure to respond in a timely manner to the non-final Office action, mailed November 10, 2005, which set forth an extendable three (3) month period for reply. The Office contended that this application became abandoned on February 11, 2006 for failure to reply to the November 10, 2005 non-final Office action. A Notice of Abandonment was mailed on July 25, 2006.

Petitioners request withdrawal of the holding of abandonment based on the assertion that a reply was timely received in the Office on February 8, 2006. The undersigned finds this argument completely convincing, as a February 8, 2006 reply is present in the application file. As February 10, 2006 was the last possible date to respond to the November 10, 2005 non-final Office action (without an extension of time), the February 8, 2006 reply was timely filed.

The petition under 37 CFR 1.181 is **granted**, the holding of abandonment is withdrawn, and the July 25, 2006 Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

Accordingly, the application file will be forwarded to Technology Center A.U. 2163 for consideration of the reply filed on February 8, 2006.

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

Shirene Willis Brantley

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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ERIC ROBINSON
PMB 955
21010 SOUTHBANK STREET
POTOMAC FALLS, VA 20165

COPY MAILED

OCT 17 2007

OFFICE OF PETITIONS

In re Application of
Shunpei Yamazaki et al
Application No. 10/438,818
Filed: May 16, 2003
Attorney Docket No. 0756-7148

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

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 4, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2822 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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---

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

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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OCT 19 2007
BY: pm 10/19/07

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OCT 17 2007
OFFICE OF PETITIONS

In re Application of Shunpei Yamazaki et al Application No. 10/438,818 Filed: May 16, 2003 Attorney Docket No. 0756-7148	DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 4, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2822 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

C:\Documents and Settings\fhicks\My Documents\470\Oct11\438818.wpd

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Patent No. : 6,887,746 B2
Ser. No. : 10/438,820
Inventor(s) : Yamazaki et al.
Issued : May 3, 2005
Title : INSULATED GATE FIELD EFFECT TRANSISTOR AND METHOD FOR FORMING THE SAME
Docket No. : 0756-7149

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
40l Dulany Street
Alexandria, VA 22314

By fax: (571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 117 or (703) 308-8309

OIPE IAP13
APR 2 7 2009
PATENT & TRADEMARK OFFICE

PTO/SB/21 (08-00)

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/438,820
Filing Date	May 16, 2003
First Named Inventor	Shunpei YAMAZAKI et al.
Group Art Unit	2822
Examiner Name	M. Trinh
Attorney Docket Number	0756-7149

ENCLOSURES *(check all that apply)*

- [x] Fee Transmittal Form
  - [x] Fee Attached
- [ ] Amendment / Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Response to Missing Parts/ Incomplete Application
  - [ ] Response to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Assignment Papers *(for an Application)*
- [ ] Drawing(s)
- [ ] Declaration and Power of Attorney
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
- [ ] After Allowance Communication to Group
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to Group *(Appeal Notice, Brief, Reply Brief)*
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosures
  1. Request for Correction of Assignee Under 37 CFR 3.81(b) and for Certificate of Correction Under 37 CFR 1.323
  2. Certificate of Correction/PTO/SB/44
  3. Copy of Assignment, Notice of Recordation of Assignment Document
  4.
  5.
  6.

Remarks

[x] The Commissioner is hereby authorized to charge any additional fees required or credit any overpayments to Deposit Account No. 50-2280 for the above identified docket number.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Eric J. Robinson, Reg. No. 38,285 Robinson Intellectual Property Law Office, P.C. PMB 955 21010 Southbank Street Potomac Falls, VA 20165
Signature	
Date	April 23, 2009

Certificate
APR 2 9 2009
of Correction

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Type or printed name	Adele M. Stamper		
Signature	Adele M Stamper	Date	April 23, 2009

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

OIPE IAP13
APR 2 7 2009
PATENT & TRADEMARK OFFICE

Attorney Docket No. 0756-7149

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)	Group Art Unit: 2822
Shunpei YAMAZAKI et al.	)	Examiner: Michael M. Trinh
Patent No.: 6,887,746	)	CERTIFICATE OF MAILING
Dated: May 3, 2005	)	I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 23, 2009.
Serial No. 10/438,820	)	
Filed: May 16, 2003	)	Adrian Stamper
For: INSULATED GATE FIELD EFFECT	)	
TRANSISTOR AND METHOD FOR	)	
FORMING THE SAME	)	

REQUEST FOR CORRECTION OF ASSIGNEE UNDER 37 CFR § 3.81(b) AND FOR CERTIFICATE OF CORRECTION UNDER 37 CFR § 1.323

ATTN: Petitions
Honorable Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The patentee respectfully requests correction of the Assignee name after payment of the issue fee, pursuant to 37 CFR 3.81(b) and further requests a Certificate of Correction under 37 CFR 1.323 be granted in the above-identified patent.

The present application and resulting patent are assigned to Semiconductor Energy Laboratory Co., Ltd. of 398, Hase, Atsugi-shi, Kanagawa-ken, 243-0036 Japan. This information is set forth by the Applicant, for example, in the copy of the *Assignment*, the copy of the *Notice of Recordation of Assignment Document*, and *Application Data Sheet* filed with the present application on May 16, 2003. This information was confirmed by the Patent Office, for example, on the *Filing Receipt* mailed July 17, 2003, and on the face of the pre-grant publication of the present application, i.e. U.S. Publication No. 2003/0199129. However, when preparing the

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Notice of Allowance and Issue Fee Due Form (PTOL-85), the Applicant's representative inadvertently omitted the name of the assignee, i.e. Semiconductor Energy Laboratory Co., Ltd., Atsugi-shi, Japan, from Box 3 of the form.

A copy of the *Notice of Recordation of Assignment Document*, reflecting the reel and frame number where the assignment is recorded and reflecting proof of the date the assignment was submitted for recordation is enclosed, along with a check in the amount of $130.00 to cover the fee under 37 CFR § 1.17(i) (for a patent to issue to assignee, assignment submitted after payment of the issue fee).

In addition, the Applicant requests that the file be forwarded to the Certificates of Correction Branch, for issuance of a Certificate of Correction. Under 37 CFR 1.323, In re Arnott, 19 USPQ2d 1049, 1052 (Comm'r Pat. 1991), and 35 U.S.C. 255, a Certificate of Correction for a Patentee's mistake may issue if the mistake is of a clerical or typographical nature, or of minor character (would not materially affect the scope or meaning of the patent), and if the correction does not involve changes which would constitute new matter or require reexamination. As a result of the above mentioned omission, an error appears on the face of the issued patent in that Section (73) Assignee does not appear. Therefore, the patentee respectfully requests correction of the Assignee name and entry of the present *Certificate of Correction* in order to add the name of the assignee, i.e. Semiconductor Energy Laboratory Co., Ltd., Kanagawa-ken, Japan.

The above correction is due to a good faith inadvertent error of a minor character, is of a clerical, typographical or grammatical nature, does not add new matter and does not require reexamination. Therefore, the patentee respectfully requests that the Certificate of Correction be granted in this patent. A fee in the amount of $100 was previously submitted for consideration of a Request for Certificate of Correction to correct assignment data, it is believed that no additional fee is necessary for the issuance of a Certificate.

Any deficiencies or overages in any fees due in connection with this patent and the requested actions should be applied to Deposit Account No. 50-2280(0756-7149).

Respectfully submitted,

Eric J. Robinson
Reg. No. 38,285

Robinson Intellectual Property Law Office, P.C.
PMB 955
21010 Southbank Street
Potomac Falls, Virginia 20165
(571) 434-6789

PTO/SB/44 (07-03)
Approved for use through 01/31/2004. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO : 6,887,746

DATED : May 3, 2005

INVENTOR(S) : Shunpei YAMAZAKI 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 face of the patent, between "Atsugi-shi, Kanagawa-ken (JP), 243" and "(*) Notice:" add --(73) Assignee: **Semiconductor Energy Laboratory Co., Ltd.**, Kanagawa-ken (JP)--.

MAILING ADDRESS OF SENDER:

Eric J. Robinson
Robinson Intellectual Property Law Office
PMB 955
21010 Southbank Street
Potomac Falls, VA 20165

PATENT NO. 6,887,746

No. of additional copies

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APR 2 7 2009
PATENT & TRADEMARK OFFICE

0756-846 HF

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

DATE: 10/18/93
TO:

N05A

GERALD J. FERGUSON, JR.
SIXBEY, FRIEDMAN, LEEDOM & FERGUSON, P.C
2010 CORPORATE RIDGE
SUITE 600
MCLEAN, VA 22102

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT BRANCH OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE U.S. PATENT AND TRADEMARK OFFICE ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT ASSIGNMENT PROCESSING SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT BRANCH, NORTH TOWER BUILDING, SUITE 10C35, WASHINGTON, D.C. 20231

ASSIGNOR: DOC DATE: 03/18/93
YAMAZAKI, SHUNPEI

ASSIGNOR: DOC DATE: 03/18/93
TAKEMURA, YASUHIKO

RECORDATION DATE: 03/23/93 NUMBER OF PAGES 003 REEL/FRAME 6688/0703

DIGEST : ASSIGNMENT OF ASSIGNORS INTEREST

ASSIGNEE:
SEMICONDUCTOR ENERGY LABORATORY CO., LTD.
398 HASE, ATSUGI-SHI
KANAGAWA-KEN 243 JAPAN

SERIAL NUMBER 8-035582 FILING DATE 03/23/93
PATENT NUMBER ISSUE DATE 00/00/00

P. Foster
EXAMINER/PARALEGAL
ASSIGNMENT BRANCH
ASSIGNMENT/CERTIFICATION SERVICES DIVISION

RECEIVED
NOV 1 0 1993
SIXBEY, FRIEDMAN, LEEDOM & FERGUSON

MAIL ROOM
MAR 23 1993
PAT. & TRADEMARK OFF.

$40.00 - 581

03 035582 A/D

RECORDATION FORM COVER SHEET

Docket: 0756-846

To the Honorable Commissioner of Patent and Trademarks. Please record the attached original documents or copy thereof.

1. Name of conveying parties: Shunpei YAMAZAKI and Yasuhiko TAKEMURA

Additional name(s) of conveying party(ies) attached? ___ Yes ___ No

2. Name and address of receiving party(ies):

Name: Semiconductor Energy Laboratory Co., Ltd.
Street Address: 398 Hase, Atsugi-shi, Kanagawa-ken 243 Japan
City _____ State _____ ZIP _____
Additional name(s) & addresses(es) attached? ___ Yes ___ No

RECEIVED
93 OCT -4 AM 8:13
ASSIGNMENT BRANCH

3. Name of Conveyance:
[X] Assignment
[ ] Security Agreement
[ ] Other _____
[ ] Merger
[ ]Change of Name
Execution Date: March 18, 1993

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: March 18, 1993

A: Patent Application No.(s) B. Patent No.(s)
Additional numbers attached? ___ Yes ___ No

REEL 6688 FRAME 703

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: SIXBEY, FRIEDMAN, LEEDOM & FERGUSON, P.C.
Street Address: 2010 Corporate Ridge, Suite 600
City: McLean State: Virginia ZIP 22102

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41): $40.00
[X] Enclosed
[ ] Authorized to be changed to deposit account

8. Deposit Account Number: _____
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

93389393

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Gerald J. Ferguson, Jr.
Name of Person Signing

Signature

3/23/93
Date

Total number of pages comprising cover sheet: 3

050 KP 04/19/93 08035582 1 581 40.00 CK

03 035582

SIXBEY, FRIEDMAN, LEEDOM & FERGUSON, P.C.
United States Patent Rights

ATTORNEY DOCKET NO.
0756-846

ASSIGNMENT

Serial No. _____ Filed _____

Insert Name(s) of Inventor(s)

WHEREAS, Shunpei YAMAZAKI,
Yasuhiko TAKEMURA

Insert Title of Invention

(hereinafter designated as the undersigned) has (have) invented certain new and useful improvements in INSULATED GATE FIELD EFFECT TRANSISTOR AND METHOD FOR FORMING THE SAME

Insert Date of Signing of Application

for which an application for Letters Patent of the United States of America has been executed by the undersigned on March 18, 1993; and

Insert Name of Assignee

WHEREAS, SEMICONDUCTOR ENERGY LABORATORY CO., LTD.

Insert Address of Assignee

of 398, Hase, Atsugi-shi, Kanagawa-ken 243 Japan

its heirs, successors, legal representatives and assigns (hereinafter designated as the Assignee) is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent(s) that may be granted therefor in the United States of America;

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration, the undersigned has (have) sold, assigned and transferred, and by these presents do sell, assign and transfer unto said Assignee the full and exclusive right to the said invention in the United States of America and its territories, dependencies and possessions and the entire right, title and interest in and to any and all Letters Patent(s) which may be granted therefor in the United States of America and its territories, dependencies and possessions, and in and to any and all divisions, reissues, continuations and extensions thereof for the full term or terms for which the same may be granted.

The undersigned agree(s) to execute all papers necessary in connection with this application and any continuing, divisional or reissue applications thereof and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

The undersigned agree(s) to execute all papers necessary in connection with any interference which may be declared concerning this application or any continuation, division or reissue thereof or Letters Patent(s) or reissue patent issued thereon and to cooperate with the Assignee in every way possible in obtaining and producing evidence and proceeding with such interference.

The undersigned agree(s) to execute all papers and documents and to perform any act which may be necessary in connection with claims under or provisions of the International Convention for the Protection of Industrial Property or similar agreements.

The undersigned agree(s) to perform all affirmative acts which may be necessary to obtain a grant of a valid United States patent(s) to the Assignee and to vest all rights therein hereby conveyed to said Assignee as fully and entirely as the same would have been held by the undersigned if this Assignment and sale had not been made.

The undersigned hereby authorize(s) and request(s) the Commissioner of Patents and Trademarks to issue any and all Letters Patents of the United States of America resulting from said application or any division or divisions or continuing or reissue applications thereof to the said Assignee, as Assignee of the entire interest, and hereby convenants that he has (they have) the full right to convey the entire interest herein assigned, and that he has (they have) not executed, and will not execute, any agreement in conflict herewith.

The undersigned hereby grant(s) the law firm of Sixbey, Friedman, Leedom & Ferguson, P.C. the power to insert on this Assignment any further identification which may be necessary or desirable in order to comply with the rules of the U.S. Patent and Trademark Office for recordation of this document.

In witness whereof, this Assignment has been executed by the undersigned on the date(s) opposite the undersigned name(s).

Date March 18, 1993, Name of Inventor Shunpei Yamazaki (signature) (SEAL)
Shunpei YAMAZAKI

Date March 18, 1993, Name of Inventor Yasuhiko Takemura (signature) (SEAL)
Yasuhiko TAKEMURA

Date _____, Name of Inventor _____ (signature) (SEAL)

Date _____, Name of Inventor _____ (signature) (SEAL)

Date _____, Name of Inventor _____ (signature) (SEAL)

(This assignment should preferably be acknowledged before a United States Consul or Notary Public. If not, then the execution by the Inventor(s) should be witnessed by at least two other persons who should sign here.)

Witness _____ (name) _____ (signature)

Witness _____ (name) _____ (signature)

Witness _____ (name) _____ (signature)

RECORDED
PATENT & TRADEMARK OFFICE
MAR 23 93

REEL 6688 FRAME 105

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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ERIC ROBINSON
PMB 955
21010 SOUTHBANK ST.
POTOMAC FALLS, VA 20165

MAILED

NOV 03 2009

OFFICE OF PETITIONS

In re Patent No. 6,887,746	:	
Issue Date: May 3, 2005	:	
Application No. 10/438,820	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 0756-7149	:	

This is a decision on the petition filed April 29, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to add 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 Alicia Kelley at (571) 272-6059. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Chris Bottorff
Petitions Examiner
Office of Petitions

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

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 19 2005

Burns, Doane, Swecker & Mathis, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

In re Application of Willi Horber Serial No. : 10/438,836 Filed : May 16, 2003 For : Endoprosthesis for a Shoulder Joint	: DECISION ON PETITION : TO WITHDRAW : HOLDING OF : ABANDONMENT

This is a decision on petitioner's request filed January 10, 2005 to review the holding of abandonment mailed December 13, 2004, for failure to respond to the Office action mailed April 29, 2004. The basis for the request is that applicant did not receive the communication mailed April 29, 2004. There is no fee required for this petition.

In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The request filed January 10, 2005 includes all the above elements. The request is therefore GRANTED and the holding of abandonment withdrawn. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner for the re-mailing of the Office action of April 29, 2004.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch

Richard A. Bertsch, Director
Technology Center 3700
Phone: (571) 272-3750

ak/05/17/05

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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GREENBERG TRAURIG, LLP
200 PARK AVE.
P.O. BOX 677
FLORHAM PARK NJ 07932

COPY MAILED

MAY 06 2009

OFFICE OF PETITIONS

In re Application of	:	
Truncale et al.	:	
Application No. 10/438,883	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 103248-010400	:	

This is a decision on the petition under 37 C.F.R. § 1.182, filed February 12, 2009, to change the name of an inventor.

The petition is **GRANTED.**

The name will be changed from Katherine A. Gomes to Katherine G. Truncale.

This matter is being directed to Technology Center AU 3775 for further examination on the merits, including consideration of the concurrently filed Request to Correct Inventorship in accordance with 37 CFR 1.48(a).

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206. All other inquiries should be directed to Technology Center 3700.

Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/438,883	05/16/2003	3775	1790	103248-010400	48	7

CONFIRMATION NO. 6455

CORRECTED FILING RECEIPT

67395
GREENBERG TRAURIG, LLP
200 PARK AVE.
P.O. BOX 677
FLORHAM PARK, NJ 07932

OC000000035813930

Date Mailed: 05/05/2009

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)

Katherine G. Truncale, Somerville, NJ;
Moon Hae Sunwoo, Old Tappan, NJ;
Arthur A. Gertzman, Stony Point, NY;

Power of Attorney: The patent practitioners associated with Customer Number 67395

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/29/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/438,883**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Cartilage allograft plug

Preliminary Class

623

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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APR 04 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES CA 90025-1030

In re Application of
HADDOCK, STEPHEN R.
Application No. 10/438,899
Filed: May 14, 2003
For: **RATE COLOR MARKER**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed February 7, 2005 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
571-272-2986

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/438,911	05/16/2003	Hyung-Bok Lee	P56877	6503

8439 7590 02/10/2009
ROBERT E. BUSHNELL & LAW FIRM
2029 K STREET NW
SUITE 600
WASHINGTON, DC 20006-1004

EXAMINER
MERCADO, JULIAN A

ART UNIT	PAPER NUMBER
1795	

MAIL DATE	DELIVERY MODE
02/10/2009	PAPER

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

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

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wk

Mailed : 2/10/09

In re Application of
Hyung-Bok Lee et al.
Serial No. 10/438,911
Filed: May 16, 2003
For: ELECTRODE ASSEMBLY FOR LITHIUM ION CELL AND LITHIUM ICON CELL USING THE SAME

DECISION ON PETITION

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 for Examiner's failure to consider the Korean Office Action and Korean Patent Publication cited in Applicants' IDS filed on March 11, 2008.

Applicants assert that the English abstract for Korean Patent Publication KR 1999-0078101 is in full compliance. It is noted that applicant did not provide an English abstract for the reference but an English language abstract of a corresponding Japanese Patent Publication No. 11-273660. There is no indication on record that indicates that JP 11-273660 is a recognized equivalent of KR 1999-0078110.

The Examiner did not also consider the Office Action from the Korean IPO as this reference is in a non-English language and is absent of an English-language translation or statement of relevance. Applicants assert that the relevance of the Korean references is based on the fact that it was cited in the Korean Office action issued on February 15, 2008 by the Korean Patent Office relative to the Korean Patent Application 10-2002-0040974 corresponding to the present U.S. application.

Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office.

DECISION

Accordingly, the petition is **DISMISSED**.

Jacqueline M. Stone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

ROBERT E. BUSHNELL & LAW FIRM
2029 K STREET NW
SUITE 600
WASHINGTON DC 20006-1004

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/438,932	05/16/2003	Robert Duncan Klett	0703P01US03	5914

20779 7590 10/14/2008
Shapiro Cohen
P.O. Box 13002
Kanata, ON K2K 0E2
CANADA

EXAMINER
JARRETT, SCOTT L

ART UNIT	PAPER NUMBER
3624	

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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MAILED FROM DIRECTORS OFFICE
OCT 14 2008
TECHNOLOGY CENTER

John W. LaBatt
Hoffman Warnick LLC
75 State Street, 14th Floor
Albany, NY 12207

In re Application of	:	
Robert Duncan Klett et al.	:	RESPONSE TO PETITION
Application No. 10/438,932	:	TO EXPUNGE FILED
Filed: May 16, 2003	:	UNDER 37 CFR 1.59(b)
For: SYSTEM AND METHOD FOR DETERMINING	:	
A PROMISE DATE FOR A DEMAND IN A	:	
BUSINESS ENVIRONMENT		

This is a response to the petition under 37 CFR 1.59(b), filed May 29, 2008, to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte Quayle* action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner requests documents titled "WebPlan CEO Data Model Guide for version 6.1" and "WebPlan CEO Data Model Reference Guide, version 7.0," filed May 29, 2008, be expunged from the record. The preceding document titles are not identical to the papers filed in the information disclosure statement (IDS), but appear to identify documents two and three of the IDS filed on May 29, 2008. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The decision on the petition is held in abeyance because prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

In the meantime, the document will be closed whereby any non-Patent and Trademark Office personnel will be precluded from viewing or having access to the document, such as via public PAIRs.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material, the information will be removed from the official file.

Wynn W. Coggins, Director
Patent Technology Center 3600
(571) 272-5350

WC/bb: 10/6/08

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SEP 28 2009

HOFFMAN WARNICK LLC
75 State Street
14th Floor
Albany, NY 12207

In re Application of Robert Duncan Klett et al. Application No. 10/438,932 Filed: May 16, 2003 For: SYSTEM AND METHOD FOR DETERMINIG A DEMAND PROMISE DATE BASED ON A SUPPLY AVAILABLE DATE	:	DECISION ON PETITION UNDER 37 CFR §1.59

This is a decision on the petition under 37 CFR 1.59(b), filed May 29, 2008, to expunge information from the above identified application.

The petition is **GRANTED**.

Petitioner requests that documents entitled "WebPlan CEO Data Model Guide for version 6.1" and "WebPlan CEO Data Model Reference Guide, version 7.0," filed May 29, 2008 be expunged from the record. Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

At 613 of Vol. 68, No. 125 of the Federal Register, the Office removed from 37 CFR 1.59 the obligation to return expunged material. Accordingly, the information will not be returned. (http://www.uspto.gov/web/offices/com/sol/notices/68fr38611.pdf)

However, the image of the information in question has been expunged from the Official electronic file. Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

This application is being forwarded to Publishing for processing into a patent.

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

bb/tl: 09/21/09

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Shapiro Cohen
P.O. Box 13002
Kanata, ON K2K 0E2
CANADA

Mail Date: 04/21/2010

Applicant	: Robert Duncan Klett	: DECISION ON REQUEST FOR
Patent Number	: 7610212	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/438,932	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1476** 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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Shapiro Cohen
P.O. Box 13002
Kanata, ON K2K 0E2
CANADA

Mail Date: 05/18/2010

Applicant : Robert Duncan Klett
Patent Number : 7610212
Issue Date : 10/27/2009
Application No : 10/438,932
Filed : 05/16/2003

: 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 **1578** 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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POSZ LAW GROUP
12040 SOUTH LAKES DRIVE
SUITE 101
RESTON VA 20191

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MAY 19 2005

OFFICE OF PETITIONS

In re Application of	:	
Hitoshi Kino et al	:	
Application No. 10/438,935	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 26B-014	:	

This is a decision on the petition, filed May 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 April 5, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3747 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106-2399

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MAR 1 0 2006
OFFICE OF PETITIONS

In re Application of	:
Larry Frank Brinkman	:
Application No. 10/438,945	: DECISION GRANTING PETITION
Filed: May 15, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. A01383	:

This is a decision on the petition, filed March 9, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 3, 3005 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 1711 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement and amendment.

Frances Hicks
Petitions Examiner
Office of Petitions

C:\Documents and Settings\FHicks\My Documents\470\Mar9\438945.wpd

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

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BEYER WEAVER & THOMAS LLP
P.O. BOX 778
BERKELEY CA 94704-0778

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NOV 1 4 2003

OFFICE OF PETITIONS

In re Application of
Seligson et al.
Application No. 10/438,962
Filed: May 14, 2003
Attorney Docket No. KLA1P092

: DECISION ON PETITION

This is in response to the "Petition to Accord Filing Date As of Date of Deposit As Express Mail under 37 CFR 1.181 and 1.10(c)" filed on October 17, 2003 which was filed in the above identified application, and also in Application No. 10/483,963, which is being treated as a petition under 37 CFR 1.10 to treat the papers filed on October 17, 2003, as if they were received on September 3, 2003 for each of the above identified applications. The petition for the '963 application will be addressed in a separate decision.

The petition with respect to application 10/438,962 is Granted.

On September 3, 2003, Petitioner filed "Submissions of Documents Required for Redacted Publication," as a single paper for Application Nos. 10/438,962 and 10/438,963, including (1) a certified copy of the PCT application, (2) a certification that the redacted copy of the application no. 10/438,962 eliminates only the part of description of the invention that is not contained in any application filed in a foreign country . . . that corresponds to the application filed in the office, (3) a certification that the redacted copy of the application no. 10/438,963 eliminates only the part of description of the invention that is not contained in any application filed in a foreign country . . . that corresponds to the application filed in the office, (4) a marked up copy of application no. 10/438,962, and (5) a marked up copy of application no. 10/438,963.

On October 17, 2003, Petitioner filed two copies of the papers filed on September 3, 2003, one copy for application no. 10/438,962 and one copy for Application No.: 10/438,963 under petition including a copy of the Express Mail label and a copy of the stamped post card receipt by the Office.

The first copy of the papers for redacted publication submitted on October 17, 2003, were placed in application 10/438,962, as that is the first listed application number on the papers originally filed on September 3, 2003.

The second copy of the papers for redacted publication submitted on October 17, 2003, were placed in application 10/438,963 as that is the second listed application number on the papers originally filed on September 3, 2003. The September 3, 2003 date of receipt requested in the petition has not been granted, as it would be inappropriate to grant a date of receipt for the second set of papers as Petitioner only submitted a single set of papers on September 3, 2003. Each application must be complete in itself, a separate copy of every paper is required for each

application file. See 37 CFR 1.4. Since applicant did not file a copy of the papers in the '963 application until October 17, 2003, the date cannot be changed to the earlier date. Furthermore, redacted publication requires that the Office have a complete redacted file for each application to furnish to third parties.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

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

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BEYER WEAVER & THOMAS LLP
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BERKELEY CA 94704-0778

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OFFICE OF PETITIONS

In re Application of
Seligson et al.
Application No. 10/438,962
Filed: May 14, 2003
Attorney Docket No. KLA1P092

: DECISION ON PETITION

This is in response to the "Request to Reconsider Denial of Request for Redacted Publication under 37 CFR 1.217" filed on November 21, 2003 for the above identified application, which is being treated as a petition under 37 CFR 1.181 and alternatively as a petition under 37 CFR 1.183.

The petition is dismissed.

On September 3, 2003, applicant submitted a request for redacted publication through the Office's electronic filing system and concurrently submitted a number of documents, but not a redacted copy of the declaration for the patent application.

On November 14, 2003, the request was dismissed because applicant was found to have failed to comply with 37 CFR 1.217(c)(3) since the declaration is part of the application.

Applicant requests reconsideration of the denial of the Request for Redacted Publication because the statute specifically states that the "application for patent" is to be published, but the text of the declaration is not itself printed, the declaration must be construed to not be part of the application for purposes of 37 CFR 1.217(c)(3). Petitioner further argues that the phrase "application" is used ambiguously throughout the 37 CFR and does not always include a copy of the oath/declaration. For example, Petitioner argues that 37 CFR 1.14 permits a representative attorney or agent to inspect the application when the oath has not been filed, thus the oath is a separate element of the application. Additionally, Petitioner argues under 37 CFR 1.33(1), if the oath has not been filed by any of the inventors, that the correspondence address may by changed by the party who filed the application. Finally Petitioner argues that the term "application" should not be construed to include the oath in the context of 37 CFR 1.217 because oath is not a paper that can be redacted, as the EFS software only allows submission of redacted copies of the application body which includes the specification, claims and drawings.

Alternatively, Petitioner argues that the rules should be waived or suspended because it would be unjust to allow early disclosure of Petitioners valuable trade secrets simply to require compliance with a rule that has no practical benefit for furthering redacted publication. Lastly, Petitioner argues that if the Office had not lost applicant's papers for the redacted publication and delayed in determining whether Petitioners request was acceptable, then Petitioner would have had sufficient time to perfect the redacted publication request.

35 U.S.C. 111(a)(2) sets forth the contents of an application for patent and provides that an application includes an oath by the applicant as prescribed by section 115 of this title. 35 U.S.C. 25 provides that a declaration may be filed instead of an oath, if provided for by the Director. Accordingly, petitioner's arguments that the declaration is not part of the application is not persuasive.

With respect to Petitioner's argument that in the alternative, the rule should be suspended or waived because it would be unjust to allow early disclosure of Applicants valuable trade secrets simply to require compliance with a rule that has no practical benefit furthering redaction of the publication, the petition is dismissed.

35 U.S.C. 122(b)(2)(B)(v) provides for redacted publication, and states that applicant may submit a redacted copy of the application, "eliminating any part of the description of the invention in such application that is not also contained in any of the corresponding applications filed in a foreign country." The declaration not part of the description of the invention, and thus could not have been redacted entirely from the application, and also no part of the declaration was submitted in redacted form. Accordingly, applicant did not comply with the provisions of the statute, and the Office has no authority to waive the requirements of the statute.

Finally Petitioner argues that if the PTO had not lost the papers and delayed in determining whether Applicant's request was not acceptable that she would have had sufficient time to re-file the papers on time. The papers that were filed on September 3, 2003 are addressed to two different applications, forcing the Office to decide whether the papers should be separated or placed as a set in the first application file. Such papers do not quickly reach the appropriate application file, and any delay in the processing of the papers was the normal and necessary result of the manner in which the papers were filed. This argument is also not persuasive, because the statute does not give the Office to authority to waive the requirements of the statute, even where applicants, with a some additional assistance from the Office may have fulfilled them.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required $130 petition fee will be charged to Deposit Account No. 50-0388.

Telephone inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

Kar

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
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OFFICE OF PETITIONS

In re Application of
Seligson et al.
Application No. 10/438,963
Filed: May 14, 2003
Attorney Docket No. KLA1P092

: DECISION ON PETITION

This is in response to the "Petition to Accord Filing Date As of Date of Deposit As Express Mail under 37 CFR 1.181 and 1.10(c)" filed on October 17, 2003 which was filed in the above identified application, and also in Application No. 10/483,962, which is being treated as a petition under 37 CFR 1.10 to treat the papers filed on October 17, 2003, as if they were received on September 3, 2003 for each of the above identified applications. The petition for the '962 application will be addressed in a separate decision.

The petition with respect to application 10/438,963 is dismissed.

On September 3, 2003, Petitioner filed "Submissions of Documents Required for Redacted Publication," as a single paper for Application Nos. 10/438,962 and 10/438,963, including (1) a certified copy of the PCT application, (2) a certification that the redacted copy of the application no. 10/438,962 eliminates only the part of description of the invention that is not contained in any application filed in a foreign country . . . that corresponds to the application filed in the office, (3) a certification that the redacted copy of the application no. 10/438,963 eliminates only the part of description of the invention that is not contained in any application filed in a foreign country . . . that corresponds to the application filed in the office, (4) a marked up copy of application no. 10/438,962, and (5) a marked up copy of application no. 10/438,963.

On October 17, 2003, Petitioner filed two copies of the papers filed on September 3, 2003, one copy for application no. 10/438,962 and one copy for Application No.: 10/438,963 under petition including a copy of the Express Mail label and a copy of the stamped post card receipt by the Office.

The first copy of the papers for redacted publication submitted on October 17, 2003, were placed in application 10/438,962, as that is the first listed application number on the papers originally filed on September 3, 2003.

The second copy of the papers for redacted publication submitted on October 17, 2003, were placed in application 10/438,963 as that is the second listed application number on the papers originally filed on September 3, 2003. The September 3, 2003 date of receipt requested in the petition has not been granted for Application No. 10/438,963, as it would be inappropriate to grant a date of receipt for the second set of papers as Petitioner only submitted a single set of papers on September 3, 2003. Each application must be complete in itself, a separate copy of

every paper is required for each application file. See 37 CFR 1.4. Since applicant did not file a copy of the papers in the '963 application until October 17, 2003, the date cannot be changed to the earlier date. Furthermore, redacted publication requires that the Office have a complete redacted file for each application to furnish to third parties.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

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

Enclosure: Corrected Filing Receipt for Application 10/438, 963

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JAN 3 0 2004

OFFICE OF PETITIONS

In re Application of
Seligson et al.
Application No. 10/438,963
Filed: May 14, 2003
Attorney Docket No. KLA1P092

: DECISION ON PETITION

This is in response to the "Request to Reconsider Denial of Request for Redacted Publication under 37 CFR 1.217" filed on November 21, 2003 for the above identified application, which is being treated as a petition under 37 CFR 1.181 and alternatively as a petition under 37 CFR 1.183.

The petition is dismissed.

Applicant requests reconsideration of the denial of the Request for Redacted Publication, arguing that the denial of the request for a redacted publication for failure to include a redacted copy of the oath/declaration is improper because the oath/declaration is not part of the application in the context of publication. Petitioner further argues that the phrase "application" is used ambiguously throughout the CFR and does not always include a copy of the oath/declaration. Alternatively, Petitioner argues that the rules should be waived or suspended because it would be unjust to allow early disclosure of Petitioner's valuable trade secrets simply to require compliance with a rule that has no practical benefit for furthering redacted publication. Lastly, Petitioner argues that if the PTO had not lost the papers filed September 3, 2002, and delayed in determining whether Petitioners request was acceptable, then Petitioner would have had sufficient time to perfect the redacted publication request.

On September 3, 2003, Petitioner filed "Submissions of Documents Required for Redacted Publication," as a single paper for Application Nos. 10/438,962 and 10/438,963, including (1) a single certified copy of the PCT application, (2) a certification that the redacted copy of the application no. 10/438,962 eliminates only the part of description of the invention that is not contained in any application filed in a foreign country . . . that corresponds to the application filed in the office, (3) a certification that the redacted copy of the application no. 10/438,963 eliminates only the part of description of the invention that is not contained in any application filed in a foreign country . . . that corresponds to the application filed in the office, (4) a marked up copy of application no. 10/438,962, and (5) a marked up copy of application no. 10/438,963. These papers have yet to be matched with either patent application file. Presumably the papers will eventually be placed in the '962 application file, the first application nu

On October 17, 2003, Petitioner filed two copies of the papers filed on September 3, 2003, one copy for application no. 10/438,962 and one copy for Application No.: 10/438,963 via petition under 37 CFR 1.10 stating that the submission is a true copy of the papers previously submitted

including a copy of the Express Mail label and a copy of the stamped post card receipt by the Office.

The showing under 37 CFR 1.10 was not considered persuasive in this instance because the suggestion that the papers filed on October 17, 2003 was a true copy of the papers filed on September 3, 2003 was false. Applicant did not file papers for each application, instead applicant filed only one copy, leaving the Office to decide in which application file to place the paper. Applicant cannot rely upon 37 CFR 1.10 to file the papers that should have been filed earlier. Since applicant did not file a copy of the papers in the '963 application until October 17, 2003, the date cannot be changed to the earlier date. Moreover, applicants were required to file a *certified* copy of the PCT priority document in each patent application file (see 37 CFR 1.217(c)(1)) and the evidence in the record demonstrates that this has not been done for the '963 application. Each application must be complete in itself, a separate copy of every paper is required for each application file. See 37 CFR 1.4. See also 37 CFR 1.217(d) (the redacted patent application file must have a complete set of redacted documents to be made available upon request). Accordingly, since only one certified copy was filed as required by 37 CFR 1.217(c)(1), and since the copy filed on September 3, 2003 containing the certified copy of the foreign filed application (instead of a photocopy) will be placed in the '962 application, the '963 application does not contain the required certified copy.

As to the copy the oath or declaration, petitioner is correct in stating that the redacted copy of the declaration was not filed in this application as required by 37 CFR 1.217. Since the Request for Redacted Publication was denied for failure to make any of the paper submission as required by 37 CFR 1.217, not simply for failure to file the redacted copy of the declaration whether the failure to file the redacted copy of the declaration was a failure to comply with 37 CFR 1.217(c) or (d) will not be addressed herein. Petitioner's request for waiver of the rules is dismissed because failure to understand and follow the rules is not an extraordinary situation where justice requires waiver of the rules.

As to petitioner's argument that if the Office had not lost the papers filed September 3, 2003, and delayed in determining whether the Redaction Request was acceptable, applicant would have had time to correct the deficiency, is not persuasive. The papers that were filed on September 3, 2003 are addressed to two different applications, forcing the Office to decide whether the papers should be separated or placed as a set in the first application file. Such papers do not quickly reach the appropriate application file, and any delay in the processing of the papers was the normal and necessary result of the manner in which the papers were filed.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required $130 petition fee will be charged to Deposit Account No. 50-0388.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

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

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Paper No. 7

Pillsbury Winthrop LLP
1600 Tysons Boulevard
McLean VA 22102

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OFFICE OF PETITIONS

In re Application of :
Pain, et al. :
Application No. 10/438,966 : ON PETITION
Filing Date: February 9, 2004 :
Atty. Dkt. No.: TP-102 :

This is a decision on the "PETITION FOR LATER FILING DATE IN REGARD TO OMITTED ITEMS PURSUANT TO 37 CFR 1.182," filed February 12, 2004 (Certificate of Mailing date of February 9, 2004).

This is also a decision on the "PETITION FOR REFUND OF EXTENSION FEE," also filed February 12, 2004. The petition for refund is being treated under 37 CFR 1.181 as a petition to reset the period of time for response to the Notice to File Missing Parts of Nonprovisional.

The application was deposited May 15, 2003. A Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed July 9, 2003. The Notice indicated, *inter alia*, that the application had been accorded a filing date but that Figures 5-8 as described in the specification appeared to have been omitted from the application.

The Notice permitted applicant to either: (1) promptly establish prior receipt in the PTO of the omitted items 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 items in question were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h))

requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

DECISION UNDER 37 CFR 1.182

The petition for later filing date is **GRANTED AS HEREIN INDICATED.**

Petitioner requests that the omitted items be accepted as part of the instant application and "will accept a later filing date for any new matter in such omitted items, that is to the extent that any matter disclosed in the omitted items was not disclosed or made obvious to one of ordinary skill in the art by the material originally presented on May 15, 2003." Petitioner has included herewith a copy of the omitted figures.

The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that two drawing sheets containing Figures 1, 1A, 2, 3, and 4 were present on May 15, 2003 when the application was submitted.

Petitioner does not appear to dispute the PTO finding that Figures 5-8 were omitted from the application as submitted. Accordingly, petitioner has failed to establish entitlement to a filing date other than February 9, 2004, the date the omitted items were submitted.

Moreover, an applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt that itemizes and properly identifies the papers that are being filed serves as *prima facie* evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. *See*, section 503, Manual Of Patent Examining Procedure (MPEP 503).

DECISION UNDER 37 CFR 1.181

The petition under 37 CFR 1.181 is **GRANTED AS HEREIN INDICATED.**

The Office will grant a petition to reset 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.

As to (a) set forth above, petitioner has established that the Notice was received February 6, 2004. Thus, the instant petition was timely submitted within 2 weeks of the date of receipt of the Office action on February 12, 2004 (Certificate of Mailing date of February 9, 2004).

As to (b) set forth above, a response to the Office action was due on or before September 9, 2003. As of the receipt date of the office action, clearly a substantial portion of the set reply period had elapsed.

As to (c) set forth above, the instant petition included evidence showing the date of receipt of the Notice. The copy of the Notice bears a receipt date of February 6, 2004. Further, petitioner has also set forth in a statement the date of receipt of the Notice and included docketing records to establish that the Notice was not timely received at the correspondence address of record. Petitioner has thus provided conclusive evidence of the date of receipt of the Notice.

Accordingly, the period of time for reply to the Notice mailed July 9, 2003 is hereby reset to start February 6, 2004, the date of receipt of the Notice. As the instant response to the Notice was timely submitted, the extension of time fee of $1,005.00 included herewith is unnecessary. A refund has been credited to petitioner's deposit account.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTH** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) <u>are not</u>

permitted. Such request should be entitled "REQUEST FOR RECONSIDERATION UNDER 37 CFR 1.182."

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

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

By facsimile: (703) 872-9306

By hand: U.S. U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of February 9, 2004, the date of receipt of the omitted items.

Telephone inquiries related to this decision may 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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HOUSTON TX 77252-2463

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AUG 16 2005

OFFICE OF PETITIONS

In re Application of	:	
James Allen Wambaugh	:	
Application No. 10/438,994	:	ON PETITION
Filed: 15 May, 2003	:	
Atty Docket No. TH2156(US)	:	

This is a decision on the petition filed on 16 May, 2005, requesting that the above-identified application be accorded a filing date of 15 May, 2003, with two (2) sheets of drawings as a part of the original disclosure.

The petition is **GRANTED** to the extent indicated.

On 15 May, 2003, the application was deposited without drawings.

On 18 March, 2005, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings, and that application should reconsider whether drawings were necessary under 35 U.S.C. § 113 (first sentence). The Notice stated that the filing date would be the date of receipt of the missing drawings.

In response, on 16 May, 2005, the present petition was filed, accompanied by two (2) sheets of drawings. Petitioner asserts that the two (2) sheets of drawings were present among the application papers deposited on 15 May, 2003.

A review of the record reveals that no sheets of drawings are located among the application papers deposited on 15 May, 2003.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and

properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503). Unfortunately, petitioners' postcard receipt itemizes the filing of Application No. 60/391,268 on 25 July, 2002, rather than the instant application. As such, the postcard receipt does not serve as evidence that the items listed therein were received in the USPTO on 15 May, 2003. If petitioners have a copy of the postcard receipt for this application with a USPTO "Office date" stamp of 15 May, 2003, for the instant application, a copy of that postcard should be submitted with any renewed petition.

Nevertheless, it has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).[1] A review of the record reveals that Claims 1-11 are process claims and Claim 14 is a method claim. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

Since the petition was necessitated by an error on the part of the USPTO, the petition fee submitted with the present petition is unnecessary and will be credited to counsel's deposit account, No. 19-1800, as authorized in the present petition.

The "Notice of Incomplete Nonprovisional Application" mailed on 18 March, 2005, was sent in error and is hereby vacated.

The application will processed and examined using the papers filed on 15 May, 2003. The copy of two (2) sheets of drawings filed with the present petition will not be used for processing or examination, but will be retained in the application file.

Petitioners may wish to file the drawings as a preliminary amendment. If the drawings are filed as a preliminary amendment, the amendment will be reviewed by the examiner for new matter.

1

MPEP 601.01(f).

The application is being referred to Initial Patent Examination Division for further processing with a filing date of 15 May, 2003, using only the application papers filed on that date.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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BARNES & THORNBURG LLP
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CHICAGO, IL 60690-2786

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In re Application of	:	
Takashi Kouge, et al.	:	
Application No. 10/439,020	:	DECISION ON PETITION
Filed: May 15, 2003	:	TO WITHDRAW
Attorney Docket No. 926530-96523	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 15, 2008.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Barnes & Thornburg, LLP has been revoked by the assignee of the patent application on August 27, 2008. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: HUSH BLACKWELL SANDERS, LLP
WELSH & KATZ
120 S. RIVERSIDE PLAZA
22ND FLOOR
CHICHAGO, IL 60606

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Paper No. 4

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JUN 1 0 2004

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TECHNOLOGY CENTER 2600

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

In re Application of
Masahiko Mawatari, et al.
Application No. 10/439,046
Filed: May 16, 2003
For: DATA DISPLAY SYSTEM, DATA RELAY DEVICE, DATA RELAY METHOD, DATA SYSTEM, SINK DEVICE, AND DATA READ METHOD

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed March 15, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

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

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BELL, BOYD & LLOYD, LLP
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APR 18 2008

OFFICE OF PETITIONS

In re Application of
Joseph Reghetti et al
Application No. 10/439,048
Filed: May 15, 2003
Attorney Docket No. 20001/10002

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed October 10, 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 an RCE and previously filed amendment on September 26, 2007; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Final Rejection mailed March 26, 2007, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 2123 to consider the reply received October 10, 2007 and September 26, 2007.

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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OCT 25 2007

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Vanish Talwar et al :
Application No. 10/439,052 :
Filed: May 14, 2003 :
Attorney Docket No. 100204993-1 :

This is a decision on the petition filed June 29, 2007 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication fee in a timely manner in reply to the Notice of Allowance mailed February 22, 2007, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on May 23, 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 payment of the Issue fee and Publication fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

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) 272-3210.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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FLIESLER MEYER LLP
650 CALIFORNIA STREET
14TH FLOOR
SAN FRANCISCO, CA 94108

Mail Date: 04/20/2010

Applicant	: Ajay Patel	: DECISION ON REQUEST FOR
Patent Number	: 7650608	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,063	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/15/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **725** 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. 5

BROOKS KUSHMAN P.C.
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238

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OFFICE OF PETITIONS

In re Application of :
Chris Nemets et al :
Application No. 10/439,069 : DECISION GRANTING STATUS
Filed: May 15, 2003 : UNDER 37 CFR 1.47(A)
For: METHOD AND SYSTEM FOR MACHINE :
VISION-BASED FEATURE DETECTION AND :
MARK VERIFICATION IN A WORKPIECE OR :
WAFER MARKING SYSTEM :

This is in response to the petition under 37 CFR 1.47(a), filed June 5, 2000.

The petition is granted.

Petitioner has shown that the non-signing inventors have 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 inventors at the addresses 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 2858 for examination in due course.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

Mailed: 6/16/05

meb
Paper Number: _____

In re application of
Luttringhaus-Henkel, et al

Serial No. 10/439,090
Filed: May 14, 2003
For: Device for Holding and Vacuum-Sealing a Container Having an Opening

DECISION ON PETITION

This is a response to the PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT, filed March 26, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of February 18, 2005 for failure to timely respond to the Notice of Allowance mailed October 1, 2004, be withdrawn. The petitioner asserts that the Notice of Allowance mailed October 1, 2004 was not received by the applicants.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(I).

The evidence presented is sufficient to establish that the Notice of Allowance was not received by the petitioner. The evidence provided includes a statement by the petitioner that the Office Action was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Allowance mailed October 1, 2004 was not received. Also provided is a copy of the docketing record and calendar, where the Notice of Allowance would have been posted had it been timely received.

Therefore, the Notice of Abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to Publications Branch for prompt processing of the application for issue.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

M. ROBERT KESTENBAUM
11011 BERMUDA DUNES, NE
ALBUQUERQUE, NM 87111

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BLOOMFIELD HILLS MI 48304-2970

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OFFICE OF PETITIONS

In re Patent No. 6,932,199 :
Issued: August 23, 2005 :
Application No. 10/439,097 : ON PETITION
Filed: May 15, 2003 :
Attorney Docket Number: 71,028-003 :

This is a decision on the petition, filed May 22, 2006 to correct the assignee's name on the front of the Patent, which is being treated as a request under 37 CFR 3.81(b)[1]

The petition is **GRANTED**.

Petitioner states that the assignee is FEDERAL-MOGUL FRICTION PRODUCTS GmbH, and seeks to correct an error on the face of the patent. Petitioner does not indicate that the failure to include the correct assignee name on the Fee(s) Transmittal form PTOL-85(b) was inadvertent however it will be so construed. Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the petition.

Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request is accompanied by a certificate of correction. Office assignment records reflect that FEDERAL-MOGUL FRICTION PRODUCTS GmbH is the assignee of record. The petition fee and fee for the certificate of correction have been applied.

---

[1] *See* Official Gazette of June 22, 2004

Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to issue.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 7,454,206 :
Issued: November 18, 2008 :
Application No. 10/439,104 : PATENT TERM ADJUSTMENT
Filed: May 15, 2003 :
Dkt. No.: 2172 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed January 12, 2009.

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

The above-identified application matured into U.S. Pat. No. 7,454,206 on November 18, 2008. The patent issued with a PTA 1,089 days. The request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d). Patentees request that the adjustment be increased from 1,089 days to 1,587 days.

Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees' calculation of adjustment asserts that the following adjustments do not overlap: a three year delay by the Office, pursuant to 37 CFR 1.703(b), of 498 days and the period of adjustment due to examination delay, pursuant to 37 CFR 1.702(a)(1), of 1,089 days. The 498-day period is calculated based on the application having been filed under 35 U.S.C. 111(a) on May 15, 2003, and the patent having been issued on November 18, 2008. Patentees assert that in addition to this 498-day period, they are entitled to a period of adjustment due to examination delay pursuant to 37 CFR 1.702(a)(1) of 1,089 days.

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

Patentees do not dispute that the total period of Office delay is the sum of the period of three years delay and the period of examination delay, to the extent that these periods of delay are not

overlapping. However, in effect, patentees contend that only a portion of the three year delay period overlaps with the period of examination delay. Accordingly, patentees submit that the total period of adjustment for Office delay is 1,587 days (deemed by applicants to be the sum of the period of three year delay (918 days) and the period of examination delay (1,089 days), reduced by 420 days of overlap). As such, patentees assert entitlement to a patent term adjustment of 1,587 days (918 days *plus* 1,089 days *less* 420 days of overlap *less* zero days of applicant delay).

The Office agrees that as of the time that at the time of issuance of the patent, the application was pending three years and 918 days after its filing date. The three years delay commences the day after the date that is three years after the date that an application is filed, and ends the date that the patent issues, notwithstanding any periods of time excluded pursuant to U.S.C. 154(b)(1)(B)(i)-(iii). The Office agrees that certain action was not taken within a specified time frame, and, thus, the entry of a period of adjustment of 1,089 days is correct. At issue is whether patentees should accrue an additional 918 days of patent term adjustment for the Office taking in excess of three years to issue the patent as well as 1,089 days for Office failure to take a certain action within a specified time frame (or examination delay).

The Office contends that the period of 918 days of delay in issuing the patent overlaps with the period of examination delay of 1,089 days. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

Likewise, 35 CFR 1.703(f) provides that:

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

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

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any

> days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). *See Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 56366 (Sept. 18, 2000). See, also, Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See, also, Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004).

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

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

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See, 145 Cong. Rec. S14,718[1].

[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.

As such, the period for over three-year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the filing date of the application.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(1)(A) is the entire period during which the application was pending before the Office, May 15, 2003, to the date the patent issued on November 18, 2008. Prior to the issuance of the patent, 1,089 days of patent term adjustment were accorded for the Office failing to respond within a specified time frame during the pendency of the application. All of the 918 days for Office delay in issuing the patent overlap with the 1,089 days of Office delay. During that time, the issuance of the patent was delayed by 1,089 days. The Office did not delay 1,089 days and then delay an additional 918 days. Accordingly, as the 918 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 1,089 days attributable to grounds specified in § 1.702(a)(1), entry of both periods is not warranted.

In view thereof, no adjustment to the patent term will be made.

The Office acknowledges submission of the required application fee of $200.00. See, 37 CFR 1.18(e). No additional fees are required.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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).

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

William O. Isaacs, II
KING & SPALDING LLP
45th Floor
191 Peachtree Street, N.E.
Atlanta GA 30303

In re Application of
Joel Edward Warren, et al.
Application No. 10/439,118
Filed: May 15, 2003
For: **METHOD AND SYSTEM FOR COMMUNICATING AND MATCHING ELECTRONIC FILES FOR FINANCIAL TRANSACTIONS**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 21, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:

(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications

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William O. Isaacs, II
KING & SPALDING LLP
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191 Peachtree Street, N.E.
Atlanta GA 30303

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OFFICE OF PETITIONS

In re Patent No. 6,990,224 :

Issue Date: January 24, 2006 :

Application No. 10/439,118 : ON PETITION

Filed: May 15, 2003 :

Attorney Docket No. 08898.105004

This is a decision on the petition filed March 21, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignees 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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OFFICE OF PETITIONS

In re Application of	:	
Miyata, Yasuhito	:	
Application No. 10/439,135	:	DECISION ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. 7613/78672	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 28, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and an Amendment, (2) the petition fee, 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). Accordingly, since the $1050.00 extension of time fee submitted with the petition on November 28, 2007, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center 3616 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

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Larry Aptekar
9822 Harwin Dr.
Houston TX 77036

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OFFICE OF PETITIONS

Applicant: Aptekar
Appl. No.: 10/439,142
Filing Date: May 15, 2003
Title: PROPERTY VERIFICATION PRODUCTS AND METHODS
Attorney Aptekar-Rental
Pub. No.: US 2004/0230439 A1
Pub. Date: November 18, 2004

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), filed on November 19, 2004, for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course, unless the patent issues before the application republishes.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

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

Paula D. Morris
Paula D. Morris & Associates, P.C.
Suite 930
2925 Briar Park Dr.
Houston TX 77042-3728

In re Application of
Webb et al.
Application No. 10/439,146
Filed: May 15, 2003
For: METHOD FOR ACCESERATED AGING OF CATALYTIC CONVERTERS INCORPORATING ENGINE COLD START SIMULATION
Attorney Docket No: SwRI-2503-05
Pub. No.: US 2004/0025580 A1
Pub. Date: February 12, 2004

This is a response to the request for corrected patent application publication under 37 CFR 1.221(b), filed on March 12, 2004, because the patent application publication is missing the assignee information on the front page of the publication.

The request is DISMISSED at applicants request in response to a phone call on May 14, 2004.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable."
A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1]

Inquires concerning this communication should be directed to Shelby Pittman at (703) 305-8169 (voice) or (703) 305-8568 (facsimile).

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

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[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Steven W. Johnston et al :
Application No. 10/439,154 :
Filed: May 15, 2003 :
Attorney Docket No. ITL.0955US(P15979) :

This is a decision on the petition, filed April 11, 2005, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for express abandonment. See 37 CFR 1.313(c)(3). The above-identified application is expressly abandoned in favor of a continuing application filed April 11, 2005.

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

This matter is being referred to Files Repository.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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ROBERTO J. RIOS
256 ELEANOR ROOSVELT
SAN JUAN PR 00918

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NOV 1 8 2009

OFFICE OF PETITIONS

In re Patent No. 6,909,375	:	
Issue Date: June 21, 2005	:	
Application No. 10/439,160	:	ON PETITION
Filed: May 15, 2003	:	
Attorney Docket No. BDL-000	:	

This is a decision in response to a petition filed September 14, 2009, (Certificate of Mailing Date September 11, 2009), under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 22, 2009 for failure to pay the 3 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

The Revocation and Power of Attorney filed on September 14, 2009 cannot be accepted since the customer number provided cannot be found in our database.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: WILLIAM DIAZ LOPEZ
3518 SHOREWOOD DRIVE
KISSIMMEE, FL 34746

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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AUG - 2 2004

DCM

In re Application of	:	
William A. ADAMS, et al.	:	
Serial Number: 10/439,170	:	PETITION UNDER
Filed: May 16, 2003	:	M.P.E.P.708.02 IV
For: FUEL CELL HEALTH MANAGEMENT SYSTEM	:	

This is in response to the petition filed June 22, 2004, 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

SHAPIRO COHEN
P.O. BOX 3440
STATION D
OTTAWA ON K1P6P-1 CA CANADA

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SCOTT M. GARRETT
MOTOROLA, INC.
LAW DEPARTMENT
8000 WEST SUNRISE BOULEVARD
FORT LAUDERDALE FL 33322

COPY MAILED

FEB 0 4 2005

OFFICE OF PETITIONS

In re Application of
Thomas E. Voor et al.
Application No. 10/439,200
Filed: May 15, 2003
Attorney Docket No. CM03713J

ON PETITION

This is a decision on the petition filed January 27, 2005 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 January 11, 2005 for failure to timely pay the issue fee on or before January 10, 2005. This petition and this decision precedes the mailing of the Notice of Abandonment.

The issue fee and petition fee, in accordance with 37 CFR 1.18, has been charged to deposit account no. 50-2117 as per your authorization. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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

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

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

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

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Paper No. 7

OTTO S. KAUDER
5382C Venetia Ct.
Boynton Beach FL 33437

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JUN 17 2004
OFFICE OF PETITIONS

In re Application of	:	
Arthur Vanmoor	:	
Application No. 10/439,207	:	ON PETITION
Filed: 15 May, 2003	:	
Att'y Docket No. AVM-28	:	

This is a decision on the petition under 37 CFR 1.137(a), filed on 4 June, 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(a)" or "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 17 December, 2003, for failure to timely reply to the non-final Office action mailed on 16 September, 2003, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 22 March, 2004.

Petitioner asserts that the Office action mailed on 16 September, 2003, was never received.

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 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 § 1.17(l);
>
> (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
>
> (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

This petition lacks item (3) above.

With regard to item (3), decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

---

[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally,

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 or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

Petitioner asserts that the Notice mailed on 16 September, 2003, was never received. A review of the record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[3]

Petitioner has submitted no evidence, save petitioner's bald assertion, that the Office action mailed on 16 September, 2003, was not received. As such, petitioner has not provided a showing that the Office action was not received.

In summary, the showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). Thus, the petition will be dismissed.

As petitioner has presented no showing of unavoidable delay, the petition will be dismissed.

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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).

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

[3] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[4] which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

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

---

[4]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)).

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
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

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

Enclosure: Form PTO/SB/64
Privacy Act Statement

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Paper No. 9

OTTO S. KAUDER
5382C Venetia Ct.
Boynton Beach FL 33437

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JUL 1 3 2004

OFFICE OF PETITIONS

In re Application of	:	
Arthur Vanmoor	:	
Application No. 10/439,207	:	ON PETITION
Filed: 15 May, 2003	:	
Att'y Docket No. AVM-28	:	

This is a decision on the petition under 1.137(b),[1] filed on 29 June, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 17 December, 2003, for failure to timely reply to the non-final Office action mailed on 16 September, 2003, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR

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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)).

1.136(a) were obtained. Notice of Abandonment was mailed on 22 March, 2004. The petition under 37 CFR 1.137(a) filed on 4 June, 2004, was dismissed on 17 June, 2004.

Petitioner has requested that the amendment filed on 4 June, 2004, be considered as the required reply.

The petition fee of $665.00 will be charged to counsel's deposit account, No. 50-3113, as authorized in the present petition.

The application file is being forwarded to Technology Center 1600 for further processing.

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

Paper No. None

Office of Patent Counsel
Schlumberger Oilfield Services
P.O. Box 2175
Houston TX 77252-2175

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JUN 29 2005

OFFICE OF PETITIONS

In re Application of
Jean-Michel Hache
Application No. 10/439,210
Filed: May 15, 2005
Attorney Docket No.: 19.0310-D1
Title: METHOD OF FORMING AN OPTIMIZED FIBER REINFORCED LINER ON A ROTOR WITH A MOTOR

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

This is a decision on the petition under 37 CFR §1.137(b)[1], filed April 14, 2005, to revive the above-identified application. The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed November 26, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue fees or publication fees[2]. Accordingly, the above-identified application became abandoned on February 27, 2005. A Notice of Abandonment was mailed on March 29, 2005.

With the petition, Petitioner has submitted the proper statement of unintentional delay. The petition, issue, and publication fees have been charged to Petitioner's Deposit Account, as authorized in the petition.

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.

---

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

2 See MPEP §710.02(e).

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

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

cc: SALAZAR,JUANITA
Schlumberger Technology Corp.
200 Gillingham, MD-9
Sugar Land, TX 77478

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Commissioner for Patents
United States Patent and Trademark Office
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FEB 05 2007

OFFICE OF PETITIONS

Hsien-Rong Liang
6-57 Junghe
P.O. Box No. 6-57
Taipei 235 TW TAIWAN

In re Application of	:
Liang	: DECISION ON PETITION
Application No. 10/439,227	:
Filed: May 16, 2003	:
Atty. Dkt. No.: MULTIFUNCTIONAL	:
REMOTE CONTROL DEVICE	:

This decision is in response to the petition, filed December 24, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **GRANTED**.

This application was held abandoned June 3, 2006 for failure to timely submit a proper reply to the Office communication mailed May 2, 2006. The Office communication set a one month shortened statutory period of time for reply. Notice of Abandonment was mailed November 28, 2006.

Petitioner alleges non-receipt of the Office communication mailed June 16, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the applicant stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. *See*, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather

than a conclusion that the Office communication was lost in the mail.

Office records indicate the Office communication was properly mailed to the correspondence address of record at the time of mailing. Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office.

The arguments and supporting documentation presented have been carefully considered and support the conclusion that the Notice was not received.

In view thereof 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 re-mailing of the Office communication. The time period for reply will be set in the newly mailed Office communication.

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
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Alexandria, VA 22313-1450
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MAILED

FEB 22 2010

OFFICE OF PETITIONS

Daniel L. Flamm
476 Green View Drive
Walnut Creek CA 94596

In re Patent No. RE40,264 :
Issue Date: April 29, 2008 :
Application No. 10/439,245 : DECISION ON PETITION
Filed: May 14, 2003 :
Attorney Docket No. :

This is a decision on the petition, filed December 22, 2009, under 37 CFR § 1.378(c) to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent. A copy of the petition was subsequently filed on January 15, 2010.

The petition is **GRANTED**.

The patent expired on May 15, 2009 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR § 1.362(e), the petition was timely filed under the provisions of 37 CFR § 1.378(c).

The maintenance fee and surcharge payment of $3540.00 to cover the requisite (1) $1240.00 seven and a half year maintenance fee (Fee Code 2552) and (2) $1640.00 surcharge (Fee Code 1558) included a $660.00 overpayment. Accordingly, $660.00 will be refunded as a credit to Petitioner's credit card.

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

Telephone inquiries concerning this matter should be directed to Brian W. Brown at (571) 272-5338.

Brian W. Brown
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)
6,857,578	2005-02-22	10/439,251	2003-05-15	P0301

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	/David H. Hitt/	Date (YYYY-MM-DD)	2009-05-15
Name	David H. Hitt	Registration Number	33182

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. 6857578
Issue Date: February 22,2005
Application No. 10439251
Filed: May 15,2003
Attorney Docket No. P0301

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

This is a decision on the electronic petition, filed May 15,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 15,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/439,288	05/14/2003	Iya Khalil	129415-00040	8605

7590 05/14/2008
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

EXAMINER
NEGIN, RUSSELL SCOTT

ART UNIT	PAPER NUMBER
1631	

MAIL DATE	DELIVERY MODE
05/14/2008	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.

Drawings

The petition filed on 2/7/2008 under 37 CFR 1.182 regarding color drawings is hereby granted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Supervisory Patent Examiner, Marjorie Moran, whose telephone number is 571-272-0720. The examiner can normally be reached on M-F 8:30 am- 3 pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marjorie Moran/
Supervisory Patent Examiner, Art Unit 1631

Pet. Dec.

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

JUL 14 2005

Mailed:_____

MEB

Paper Number:

_____

In re application of
Glittenberg, et al.
Serial No. 10/439,303
Filed: May 16, 2003
For: Starch Compositions And The Use Thereof In The Wet-End Of Paper Preparation

DECISION ON PETITION

This is a response to the PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT, filed May 25, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of May 17, 2005 for failure to timely respond to the Office Action mailed April 21, 2004, be withdrawn. The petitioner asserts that the response was timely filed on November 3, 2004. The petitioner has provided a copy of the date-stamped receipt card evidencing the filing of the response on November 3, 2004, and a copy of the response to the office action, filed concurrently therewith.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding a Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed.

As set forth in MPEP 711.03(c), 37 CFR 1.10(c) through 1.10(e) 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 CFR 1.10(c), (d), or (e) (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 or transmission under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). 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 CFR 1.8).

The petitioner's showing of the copy of the date-stamped receipt card evidencing the filing of the response on November 3, 2004 is sufficient. The application will be forwarded to the examiner for processing and consideration of the papers filed November 3, 2004, a copy of which is provided as an attachment to the instant petition.

The Petition is **Granted**.

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

JMstone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Kendrew H. Colton
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Paper No.

FITCH, EVEN, TABIN & FLANNERY
P. O. BOX 18415
WASHINGTON, DC 20036

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OFFICE OF PETITIONS

In re Application of	:	
Glittenberg et al.	:	DECISION ON APPLICATION
Application No. 10/439,303	:	FOR
Filed: May 16, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 7393/80402	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENTS UNDER 35 U.S.C. §154(b)," filed April 26, 2006. Applicants request that the determination of patent term adjustment be corrected from zero (0) days to at least three hundred sixty-seven (367) 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 TWO HUNDRED SIXTY-THREE (263) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 7, 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 0 days. The instant application for patent term adjustment was timely filed[1]. Applicants dispute the reduction of 387 days on the basis that their response to the Notice mailed October 6, 2004 was timely filed on November 3, 2004, but lost by the Office. In support thereof, applicants

[1] PALM records indicate that the Issue Fee was received on June 7, 2006.

refer to the decision on petition mailed July 14, 2005. Further, applicants assert entitlement to an additional period of adjustment of 281 days for Office delay from November 3, 2004, the date their response was originally filed, to August 11, 2005, the date the response was resubmitted.

The basis for applicants' request for a period of adjustment of 281 days is improper. The proper grounds for entering periods of adjustment based on examination delay are set forth in 37 CFR 1.702. Applicants request entry of a period counting the number of days from the original date of filing of their response until the re-filing of their response. There is no basis for entering of this period in the rules.

However, applicants are correct that correction of the periods of adjustment and of reduction is necessary given their showing that the response was filed on November 3, 2004 (not August 11, 2005).

37 C.F.R. §1.704(c)(7) provides that a period of reduction is entered for:

> Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

In this instance, an initial response to the non-final Office action mailed April 21, 2004 was received on July 20, 2004. By Notice mailed October 6, 2004, applicants were advised that there was an omission in this response. Applicants have established that the response correcting this omission was filed on November 3, 2004. Thus, the period of reduction is 106 days (not 387 days) counting the number of days in the period beginning on July 21, 2004, the day after the reply having an omission was filed, and ending on November 3, 2004 (not August 11, 2005), the date that the reply correcting the omission was filed.

Moreover, 37 C.F.R. 1.703(a)(2) provides that a period of adjustment for Office delay in taking in excess of four months to respond to a reply under §1.111 is entered counting:

> The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

Given that the reply was received on November 3, 2004 (not August 11, 2005) this period is 369 days (not 86 days) counting the number of days in the period beginning on March 4, 2005, the date that is four months after the date a reply under 1.111 was filed, and ending on March 7, 2006, the date of mailing of the notice of allowance.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is **TWO HUNDRED SIXTY-THREE (263)** days (369 days of Office delay reduced by 106 days of applicant delay).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The Office of Patent Publication has been advised of this decision. The application is thereby forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

Day : Tuesday
Date: 10/24/2006

PALM INTRANET

Time: 16:54:56

PTA Calculations for Application: 10/439303			
Application Filing Date:	05/16/2003	PTO Delay (PTO):	86
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	387
Post-Issue Petitions:	0	Total PTA (days):	263
PTO Delay Adjustment:	564		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
62	10/24/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		106	
61	10/24/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	387		
60	10/24/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	369		
59	10/24/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		86	
49	03/07/2006	MAIL NOTICE OF ALLOWANCE	86		37
48	03/07/2006	MAIL EXAMINER'S AMENDMENT			
47	11/16/2005	ISSUE REVISION COMPLETED			
46	11/16/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
45	11/16/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
44	08/11/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
43	05/16/2003	PRELIMINARY AMENDMENT			
42	11/07/2005	CORRESPONDENCE ADDRESS CHANGE			
41	10/28/2005	EXAMINER'S AMENDMENT COMMUNICATION			
40	10/28/2005	NOTICE OF ALLOWABILITY			
39	08/24/2005	CASE DOCKETED TO EXAMINER IN GAU			
38	08/16/2005	DATE FORWARDED TO EXAMINER			
37	08/11/2005	RESPONSE AFTER NON-FINAL ACTION		387	27
36	07/14/2005	MAIL NOTICE OF RESCINDED ABANDONMENT			
35	07/14/2005	NOTICE OF RESCINDED ABANDONMENT IN TCS			
34	08/12/2005	CASE DOCKETED TO EXAMINER IN GAU			
33	07/14/2005	PETITION TO REVIVE APPLICATION - GRANTED			
32	05/25/2005	PETITION ENTERED			

31	05/17/2005	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
30	05/16/2005	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
29	10/06/2004	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
28	07/27/2004	DATE FORWARDED TO EXAMINER			
27.1	07/20/2004	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
27	07/20/2004	RESPONSE AFTER NON-FINAL ACTION			
26	07/20/2004	WORKFLOW INCOMING AMENDMENT IFW			
25	04/21/2004	MAIL NON-FINAL REJECTION			
24	04/06/2004	NON-FINAL REJECTION			
23	03/24/2004	MISCELLANEOUS INCOMING LETTER			
20	03/05/2004	CASE DOCKETED TO EXAMINER IN GAU			
19	10/10/2003	PRELIMINARY AMENDMENT			
18	08/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	07/11/2003	PRELIMINARY AMENDMENT			
16	10/31/2003	APPLICATION RETURN FROM OIPE			
15	10/31/2003	APPLICATION IS NOW COMPLETE			
14	09/16/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
13	10/31/2003	PRE-EXAM OFFICE ACTION WITHDRAWN			
12	10/31/2003	APPLICATION RETURN TO OIPE			
11	10/30/2003	APPLICATION DISPATCHED FROM OIPE			
10	10/31/2003	APPLICATION IS NOW COMPLETE			
7	05/16/2003	CLAIM PRELIMINARY AMENDMENT			
4	09/16/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
3	07/18/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	05/28/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/16/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

In re Application of	:	
McDonough et al.	:	DECISION ON PETITION
Application No. 10/439,305	:	UNDER 37 CFR 1.78(a)(6)
Filed: May 16, 2003	:	
Attorney Docket No. 5299	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed January 20, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **dismissed**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5)(ii). 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) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The Office notes that the amendment submitted with the instant petition contains a reference to an incorrect application, No. 06/378,122, instead of the correct provisional application, No. 60/378,122, filed May 16, 2002. Accordingly, applicant failed to comply with the requirements of 37 CFR 1.78(a)(5)(iii).

Before the petition under 37 CFR 1.78(a)(6) can be granted, applicant must file a renewed petition under 37 CFR 1.78(a)(6) and an amendment[1] or an Application Data Sheet, containing a reference to prior-filed provisional application, No. 60/378,122.

The Office will charge the $1,370.00 surcharge set forth in § 1.17(t) to Deposit Account No. 19-2110, as authorized.

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

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

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

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

Any questions concerning this matter may be directed to Senior Petitions Attorney Christina Tartera Donnell at (571) 272-3211.

Frances Hicks

Frances Hicks
Lead Paralegal
Office of Petitions
Office of the Deputy Commission
for Patent Examination Policy

[1] *Note* 37 CFR 1.121 and 37 CFR 1.4(c).

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OFFICE OF PETITIONS

In re Application of	:	
McDonough et al.	:	DECISION ON PETITION
Application No. 10/439,305	:	UNDER 37 CFR 1.78(a)(6)
Filed: May 16, 2003	:	
Attorney Docket No. 5299	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed February 15, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(5)(ii). 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) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

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

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(5)(iii); (2) the

surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(iii). Additionally, the instant nonprovisional application was filed within twelve months of the filing date of the prior-filed provisional Application No. 60/378,122, filed May 16, 2002, for which priority is claimed.

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

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

Any inquiries concerning this decision may be directed to Petitions Attorney Christina Tartera Donnell at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 3736 for appropriate action on the request for continued examination and amendment submitted on February 15, 2006, including consideration by the examiner of the claim under 35 U.S.C. § 119(e) for the benefit of priority to the prior-filed provisional application.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Application of
Alexander Keller
Application No. 10/439,311
Filed: May 15, 2003
Attorney Docket No. MENT-066

ON PETITION

This is a decision on the petition filed August 3, 2005, to revive the above identified application under 37 CFR 1.137(a)[1] or in the alternative under 37 CFR 1.137 (b)[2].

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

A Notice to File Missing Parts was mailed July 7, 2003 and set a two (2) month shortened statutory period for reply. Since the maximum period of time obtainable for

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

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
(2) the petition fee as set forth in 37 CFR 1.17(l);
(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and
(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional 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(m);
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and
(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

an extension of time had elapsed and since no proper reply had been received, the application became abandoned on September 8, 2003. Accordingly, a Notice of Abandonment was mailed September 7, 2004.

PETITION UNDER 37 CFR 1.137(a)

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

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[4]

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[5] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[6]

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[3]35 U.S.C. § 133.

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

[5]See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

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

Petitioner asserts that they were unavoidably delayed from filing a timely response to the Office action due to the attorney of record's failure to take action in this matter, failure to respond to their inquiries regarding the status of this and other patent applications and finally his failure to advise the applicants that this and other patent applications had become abandoned.

In order to establish unavoidable delay, petitioner must demonstrate diligence on the part of the attorney of record in prosecution of the matter.[7] Since petitioners can't say for certain whether the attorney of record exercised any diligence with respect to the prosecution of this application, rather than unavoidable delay and a lack of diligence on the part of petitioner's chosen representative, the facts point more towards negligence on the part of the attorney of record. The series of events outlined in the petition suggest that the attorney of record may have been negligent in prosecuting the application and in failing to inform petitioner that the application had become abandoned.

Unfortunately, however, the U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inaction.[8] Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative however does not constitute unavoidable delay within the meaning of 35 U.S.C. § 133 or 37 CFR 1.137(a).[9]

As petitioner has not provided a showing of evidence to satisfy the requirements of a grantable petition under 37 CFR 1.137(a), the petition will be dismissed.

PETITION UNDER 37 CFR 1.137(b)

This petition, as filed in the alternative under 37 CFR 1.137(b), is granted.

As the present petition was filed and decided under both 37 CFR 1.137(a) and (b), counsel's deposit account, No. 12-2315, has been charged in the amount of $500 for the unavoidable petition and $1500 for the unintentional petition.

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[7] See Douglas v. Manbeck, 21 USPQ2d 1697, 1700 (E.D. Pa. 1991), aff'd 975 F.2d 869, 24 USPQ2d 1318 (Fed. Cir. 1992).

[8] Link v. Wabash, 370 U.S. 626, 633-34 (1962).

[9] Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891).

This matter is being referred to the Office of Initial Patent Examination for further pre-examination processing.

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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PMB 955
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POTOMAC FALLS VA 20165

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OFFICE OF PETITIONS

In re Application of	:	
Hajime Kimura	:	
Application No. 10/439,312	:	DECISION GRANTING PETITION
Filed: May 16, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 0756-7159	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 12, 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 September 26, 2007 ***cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.***[1]

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

This application is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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HOGAN & HARTSON LLP
IP GROUP, COLUMBIA SQUARE
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WASHINGTON, DC 20004

Mail Date: 04/20/2010

Applicant	: Randall S. Hickle	: DECISION ON REQUEST FOR
Patent Number	: 7578802	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,323	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **968** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Patent No. 6,998,285	:	
Issue Date: February 14, 2006	:	
Application No. 10/439,359	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 09793822-0190	:	

This is a decision on the petition filed February 27, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

The fee for the request under 37 CFR 3.81(b) is $130, and not $400 as assessed to petitioner's deposit account. Accordingly, the $270 overpayment will be credited to petitioner's deposit account in due course. Further, the required $100 fee for the certificate of correction will be charged to petitioner's deposit account, as authorized.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
Federighi, et al.	:	DECISION ON PETITION
Application No. 10/439,367	:	
Filed: May 16, 2003	:	
Docket No.: P2129USC3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 26, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned May 4, 2006 for failure to timely submit the issue fee in response to the Notice of Allowance and Issue Fee(s) Due ("Notice") mailed February 3, 2006. The Notice set a three month statutory period for reply. Notice of Abandonment was mailed June 14, 2006.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4)any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely submit a proper reply to the Notice is accepted as having been unintentionally delayed.

This application will be forwarded to the Publications Division 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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Mailed: 1-18-06

In re application of	:	
Banister, et al.	:	DECISION ON
Serial No. 10/439,379	:	PETITION
Filed: May 16, 2003	:	
For: FLUID BED FILTER-DRYER APPARATUS	:	
	:	
	:	

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.181(a), filed July 1, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 29, 2005, for failure to timely file a proper reply to the Office letter mailed December 2, 2004, be withdrawn since applicants did timely file a reply on May 2, 2005.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's response, the paper entitled AMENDMENT, was properly filed on May 2, 2005. The evidence provided includes a return receipt bearing a PTO Date Stamp of May 2, 2005. Any holding of abandonment for failure to timely file a proper reply to the Office letter mailed December 2, 2004, therefore, is hereby vacated.

In view of the Notice of Rescinded Abandonment mailed by the USPTO on August 3, 2005, the application has been returned to pending status. Accordingly, the Petition is **DISMISSED**.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
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Mail Date: 04/20/2010

Applicant	: Phillip Wayne Huelson	: DECISION ON REQUEST FOR
Patent Number	: 7573286	: RECALCULATION of PATENT
Issue Date	: 08/11/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,387	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **413** 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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In re Application of	:	
Wainscott et al.	:	ON REQUEST FOR
Application No. 10/439394	:	RECONSIDERATION OF
Filing or 371(c) Date: 05/16/2003	:	PATENT TERM ADJUSTMENT
Attorney Docket Number: 081445-0323	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM UNDER 37 C.F.R. §1.705, filed July 30, 2009. Applicant submits that the correct patent term adjustment to be indicated on the patent is 1447 days, not 832 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The Request for Reconsideration is properly treated under 37 C.F.R. §1.705(b).

Patentees request that the decision on this request for reconsideration of patent term adjustment be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance. Accordingly, request for deferral or delay of the instant decision is **DISMISSED**.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Attorney Derek Woods at (571) 272-3232.

/ALESIA M. BROWN/

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

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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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OFFICE OF PETITIONS

In re Application of	:	
Wainscott et al.	:	ON REQUEST FOR
Application No. 10/439394	:	RECONSIDERATION OF
Filing or 371(c) Date: 05/16/2003	:	PATENT TERM ADJUSTMENT
Attorney Docket Number: 081445-0323	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM UNDER 37 C.F.R. §1.705, filed July 30, 2009. Applicant submits that the correct patent term adjustment to be indicated on the patent is 1447 days, not 832 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The Request for Reconsideration is properly treated under 37 C.F.R. §1.705(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Attorney Derek Woods at (571) 272-3232.

/ALESIA M. BROWN/

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

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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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MILWAUKEE, WI 53202-5306

Mail Date: 04/21/2010

Applicant	: Barrett G. Wainscott JR.	: DECISION ON REQUEST FOR
Patent Number	: 7634555	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,394	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1461** 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 : 7/16/09 **Paper No.:** _____

TO SPE OF : ART UNIT 2861 Luu Matthew (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/439403 Patent No.: 6921156

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Certificates of Correction Branch
703-308-9390 ext. _____

Thank You For Your Assistance

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

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

Comments: The certificate of correction has been approved.

MATTHEW LUU
SUPERVISORY PATENT EXAMINER

SPE

2861
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

FAX COVER SHEET

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STIC Scientific and Technical Information Center

Today's Date 1/14/10

Total Pages (including cover)

Recipient Henry Randall

Fax 703 756- 1644

Phone

Sender MATTHEW LUU (SPE 2862)

Fax

Phone

Subject

COMMENTS

SIRA Delivering Technologies for Patents

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)
6948270	2005-09-27	10439404	2003-05-16	10021-01 PUS

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	/F. Jason Far-hadian/	Date (YYYY-MM-DD)	2010-04-08
Name	F. Jason Far-hadian, Esq.	Registration Number	42523

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6948270
Issue Date: September 27,2005
Application No. 10439404
Filed: May 16,2003
Attorney Docket No. 10021-01 PUS

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

This is a decision on the electronic petition, filed April 20,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 20,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

OCT 14 2004

Paper No. 100104

SAND & SEBOLT
AEGIS TOWER, SUITE 1100
4940 MUNSON STREET, NW
CANTON, OH 44718-3615

In re Application of:	:	
RAYMOND L. HENSEL	:	
Serial No.: 10/439,430	:	DECISION ON REQUEST TO WITHDRAW
Filed: May 16, 2003	:	FROM RECORD
Attorney Docket No.: **1662-GEN**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed August 20, 2004.

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

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

The request is **APPROVED**.

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

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

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

cc: FRED H. ZOLLINGER, III
6370 MT. PLEASANT AVE., NW
P.O. BOX 2368
NORTH CANTON, OH 44720

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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MAILED
FROM DIRECTORS OFFICE
MAR 16 2005
TECHNOLOGY CENTER 3600

Eugene P. Rodely
156 U.S. Route 51
Du Quoin, IL 62832

In re Application of
Eugene P. Rodely
Application No. 10/439,431
Filed: May 16, 2003
For: SPINNING BAIT/LURE WITH HORIZONTAL CYLINDER AND DRUM

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on January 24, 2005.

The petition is **DISMISSED**.

A review of the file record reveals that a Notice of Abandonment was mailed September 22, 2004 because of applicant's failure to reply to the non-final Office action of February 20, 2004.

Petitioner states that a response was filed by Express mail on May 20, 2004. A copy of the Express mail receipt dated May 20, 2004 has been included.

Any petition to withdraw the holding of abandonment based upon Express Mail must provide the following:

(1) A copy of the paper submitted including the number of the "Express Mial" mailing label that was placed on the original prior to mailing. MPEP 513.
(2) A copy of the "Express Mail" mailing label showing the "date in" entered by the USPS. MPEP 513.
(3) The date the "Express Mail" mailing label must be prior to the expiration of any time period, including any extensions of time.
(4) The copy of the submission must be submitted promptly after the applicant becomes aware of the Office having no evidence of the receipt of the original. 37 CFR 1.10(e)(1). This is generally taken to be 2 months. Any submissions beyond that time may require a Terminal Disclaimer.
(5) The copy will need to include an attached statement that established that the copies of the correspondence, the copy of the Express Mail mailing label, and ay official notation entered by the USPS are "true copies". 37 CFR 1.10 (e)(4).
(6) Any necessary fees must be paid prior to according the copy the filing date of the Express Mail mailing label.

The petition fails to provide a "True Copy" of the submitted correspondence. Thus, requirements (1)-(6) above have not been met.

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
(703) 308-0866

KJD/jwk: 3/8/05

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

Eugene P. Rodely
156 U.S. Route 51
Du Quoin IL 62832

COPY MAILED

JAN 20 2006

OFFICE OF PETITIONS

In re Application of :
Eugene P. Rodely :
Application No. 10/439,431 : DECISION ON PETITION
Filed: May 16, 2003 :
Title: SPINNING BAIT/LURE WITH :
HORIZONTAL CYLINDER AND DRUM :

This is decision on the renewed petition filed on May 9, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience to petitioner.

On February 20, 2004, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period for response. In the absence of a timely reply, the application became abandoned on May 21, 2004. On September 22, 2004, the Office mailed a Notice of Abandonment.

On January 24, 2005, petitioner filed a petition to withdraw the holding of abandonment based on his assertion that he submitted a timely response to the nonfinal Office action by Express Mail on May 20, 2004. In support of the petition, petitioner submitted a copy of Express Mail label No. ER726422623US, showing a date-in of May 20, 2004. However, the petition was dismissed by the decision of March 16, 2005, because petitioner failed to submit a copy of the original correspondence submitted in response to the nonfinal Office action.

On May 9, 2005, petitioner submitted the present renewed petition and a copy of the original correspondence filed in response to the nonfinal Office action. Upon reviewing the response to the nonfinal Office action, it does not appear that petitioner placed the Express Mail Label Number on the correspondence as originally filed. To be effective, the Express Mail Label Number must be placed on each separate paper either directly on the document or by a separate paper firmly and securely attached thereto. See MPEP 513(III). Thus, petitioner has not provided sufficient evidence that he deposited the original response to the nonfinal Office action in Express Mail Service on May 20, 2004.

As petitioner has not shown that the response to the nonfinal Office action was filed timely in the USPTO, the petition to withdraw the holding of abandonment is dismissed. The application remains abandoned.

To revive the application, petitioner may wish to file a petition under 37 CFR 1.137(b) on the basis of unintentional delay. 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 ($750.00 for a small entity), and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The appropriate form for filing a "Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" accompanies this decision for petitioner's convenience.

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

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

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

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

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

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosures: PTO/SB/64 and the Privacy Act Statement

UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
PO BOX 1450, ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

SEP 1 5 2003

#15

THE FIRM OF HUESCHEN AND SAGE
500 COLUMBIA PLAZA
350 EAST MICHIGAN AVE.
KALAMAZOO MI 49007

In re Application of	:
Paul Chaplin et al	:
Serial No.: 10/439,439	: PETITION TO MAKE SPECIAL
Filed: May 16, 2003	:
Attorney Docket No.:	:

This is in response to applicants' petition filed May 16, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

M.P.E.P. 708.02, part XI relates to petitions to make an application special for countering terrorism.

> XI. INVENTIONS FOR COUNTERING TERRORISM
> In view of the importance of developing technologies for countering terrorism and the desirability of prompt disclosure of advances made in these fields, the U.S. Patent and Trademark Office will accord "special" status to patent applications relating to counter- terrorism inventions.
> 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 kidnaping..." 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 U.S. Patent and Trademark Office to make the application special. **The petition for special status should be accompanied by a statement explaining how the invention contributes to countering terrorism.**

Applicants present reasons for making the application special, as required with respect to bioterrorism.

Therefor the petition is **GRANTED**.

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.

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

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 12 2006

3M INNOVATIVE PROPERTIES COMPANY
P.O. Box 33427
St. Paul, MN 55133-3427

In re Application of:	:	
MA *et al.*	:	DECISION ON PETITION
Serial No.: 10/439,449	:	TO WITHDRAW HOLDING
Filed: May 16, 2003	:	OF ABANDONMENT
Attorney Docket No.: **58572US002**	:	

This is a decision on the petition filed March 03, 2005, to withdraw the holding of abandonment, under 37 CFR § 1.181, in the above-identified application. No petition fee is required.

The petition is **dismissed**.

The application was held abandoned for failure to timely pay the issue fee in response to the Notice of Allowance and Issue Fee Due (Notice of Allowance) mailed on October 06, 2004. A Notice of Abandonment was mailed on February 18, 2005.

Petitioner asserts that a Request for Continued Examination (RCE), and an Information Disclosure Statement (IDS) was submitted to the U.S. Patent and Trademark Office (USPTO) on December 06, 2004. To support this assertion, petitioner has submitted a copy of the RCE and IDS.

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.

The failure to receive correspondence in the PTO that was timely deposited in the U.S. mail or transmitted by facsimile is addressed in 37 CFR § 1.8(b), and 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.

Pursuant to 37 CFR § 1.8(b)(3) a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission is required where the USPTO does not have a record of such a mailing or transmission. The petition does not include this statement.

Accordingly, the petition is **dismissed**.

Should petitioner desire reconsideration, petitioner should supplement this petition with a showing providing the needed information as outlined above. A copy of a properly itemized, date stamped post card receipt may be used to support the statement under 37 CFR § 1.8(b)(3).

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

Petitioner may wish to consider filing a petition under 37 CFR 1.137(a) or (b) requesting that the application be revived.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Arthur T. Grimley, Acting Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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3M INNOVATIVE PROPERTIES COMPANY
P.O. Box 33427
St. Paul, MN 55133-3427

MAR - 1 2007

In re Application of:
MA *et al.*
Serial No.: 10/439,449
Filed: May 16, 2003
Attorney Docket No.: **58572US002**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the renewed petition filed on January 31, 2006, for reconsideration of the decision on a previous petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above-identified application. No petition fee is necessary.

The petition is **GRANTED.**

The previous petition was dismissed because the petition lacked a statement, pursuant to 37 CFR § 1.8(b)(3), which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission on December 06, 2004.

The renewed petition now includes a statement by Judy L. Hansen to the previous timely mailing of the Request for Continued Examination (RCE) on December 06, 2004.

For the above stated reason, the petition is granted. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for processing the copy of the RCE filed with the petition.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

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

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Motorola Inc.
600 North US Highway 45
Room AS437
Libertyville IL 60048-5343

COPY MAILED
JAN 17 2006
OFFICE OF PETITIONS

In re Application of	:	
Harmon et al.	:	
Application No. 10/439,481	:	DECISION ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. CS21909RL	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on August 5, 2005, to revive the above-identified application. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

The application became abandoned on March 23, 2005, for failure to file a proper and timely response to the final Office action mailed on December 22, 2004, which set a three (3) month shortened statutory period for reply. Petitioner filed an amendment in response to the final Office action on February 22, 2005, and resubmitted it on June 22, 2005. On July 19, 2005, petitioner submitted a request for continued examination (RCE) and authorized the Office to charge the RCE fee to Deposit Account No. 50-2117. On July 20, 2005, the examiner mailed an Advisory Action, stating that the amendment did not *prima facie* place the application in condition for allowance. On August 5, 2005, petitioner filed the present petition, a second RCE and an amendment, and authorized the Office to charge the RCE fee and the petition fee to the Deposit Account.

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 a RCE and an amendment, authorized the

Office to charge the petition fee to the Deposit Account, and made the proper statement of unintentional delay. Accordingly, the petition under 37 CFR 1.137(b) is **granted**.

This matter is being referred to Technology Center 3677.

All inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center. Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 3

MAIL

MAR 2 2 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Attention: NEIL K. NYDEGGER
NYDEGGER & ASSOCIATES
348 Olive Street
San Diego CA 92103

In re Application of:
GRIJALVA, et al.
Application No.: 10/439,497
Filed: May 16, 2003
For: FRANGIBLE ELECTRONIC SEALING SECURITY SYSTEM

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed May 16, 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 systems for monitoring the integrity of a sealed storage volume or enclosure. The reason supporting the petition describes a system that will counter terrorism by preventing weapons of mass destruction and other terrorism related materials from being smuggled into the United States. 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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600

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

NYDEGGER & ASSOCIATES
348 OLIVE STREET
SAN DIEGO CA 92103

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OFFICE OF PETITIONS

In re Application of	:	
Grijalva et al.	:	DECISION ON
Application No.: 10/439,497	:	
Filing Date: May 16, 2003	:	PETITION UNDER
Docket No.: 11196.32	:	
For: Frangible Electronic Sealing Security System	:	37 CFR 1.137(b)

This is a decision on Petition Under 37 CFR 1.137(b), filed on August 9, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed October 1, 2004, which set a shortened statutory period for reply of three (3) months. The application went abandoned at midnight on April 1, 2005. A Notice of Abandonment was mailed on August 30, 2005.

Petitioner has met the requirements for revival under §1.137(b). Petitioner submitted the reply in the form of an amendment, paid the petition fee and made the statement that "the entire delay in filing the required reply to the Office Action, from the due date for the reply until the filing of a grantable petition pursuant to the requirements set forth in 37 CFR 1.137(b), was unintentional." This is being construed as 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." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Since this utility application was filed after June 8, 1995, no terminal disclaimer is required. Accordingly, the petition is granted under §1.137(b).

This application is being referred to Technology Center 2636 for continued processing.

George M. Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
on behalf of
Office of Petitions
Telephone: 571-272-3283
Facsimile: 571-273-0459

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

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OFFICE OF PETITIONS

In re Application of	:	
RELYEA et al.	:	
Application No. 10/439,505	:	DECISION ON PETITION
Filed: 05/16/2003	:	
Attorney Docket No.	:	
14917.0227US01/MS304708.0	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 13, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit replacement drawings in a timely manner in reply to the Notice of Allowability, mailed February 15, 2007, which set a period for reply of three (3) months. Accordingly, this application became abandoned on May 16, 2007. A Notice of Abandonment was mailed on June 11, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of replacement drawings; (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 Technology Center AU 2176 for review of the Amendment under 37 CFR 1.312, filed on November 13, 2007.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JJGJR.: 04-06

Paper No: __

General Electric Company
CRD Patent Docket Rm 4A59
P.O. Box 8, Bldg. K-1
Schenectady NY 12301

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APR 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Schaepkens, et al.	:	
Application No. 10/439,506	:	DECISION
Filing Date: 15 May, 2003	:	
Attorney Docket No.: 122184-1	:	

This is a decision on the petition filed on 21 March, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

NOTES: **Petitioner does not appear to be Counsel of Record or otherwise empowered to prosecute the instant application. In this connection, Petitioner must file of record the appropriate revocation/power of attorney.**

Moreover, the correspondence address of record are different than that shown on the papers submitted herein. However, Petitioner has submitted no formal change(s) in this regard.

If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address (for correspondence) and Fee 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.

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(b)[1] (as to unintentional delay) must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(b)."

(2) Thereafter, there will be no further reconsideration of this matter.

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 27 September, 2004, with reply due absent extension of time on or before 27 December, 2004;
- the instant application went abandoned after midnight 27 December, 2004;
- the Office mailed a Notice of Abandonment on 6 April, 2005;
- 16 months after abandonment and nearly a year after Notice thereof, Petitioner filed the instant application (with fee) an amendment after final, which amendment is not of right, as the reply and made the statement of unintentional delay.

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[1] Effective December 1, 1997, the provisions of 37 C.F.R. §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 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §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 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. 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 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

STATUTES, REGULATIONS AND ANALYSIS

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

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

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt,[7] and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

---

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

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

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

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

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

[7] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

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

As to the Allegation
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Because Petitioner appears not to have been of record at the time the instant application went abandoned, Petitioner is not able to aver as to the unintentional nature of the abandonment. Further, Petitioner needs detail how delays of 16 months from abandonment and nearly a year from Notice thereof constitutes diligence[9] in attendance to matters that must be considered among one's "most important business" affairs.[10]

Moreover, Petitioner is reminded that a proper reply[11] to a final Office action is required as the to accompany a petition under 37 C.F.R.§1.137(b).

To this end, Petitioner further must provide a statement by an attorney of record at the time the application went abandoned as to the unintentional nature of that event.

Moreover, there is no indication at this writing that Petitioner has provided a proper reply to the final Office action herein because the Examiner has not indicated that the amendment will be entered.

Therefore, it appears as of this writing that Petitioner has yet to satisfy the "reply" and "statement" requirements under the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **dismissed**.

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[9] 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.

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

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

Further correspondence with respect to this matter should be addressed as follows:[12]

By mail: Commissioner for Patents[13]
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

cc:
DUANE MORRIS LLP
1667 K STREET NW/STE. 700
WASHINGTON, DC 20006

[12] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. Faxes sent to the old number no longer are routed to the new number. The number (571) 273-8300 is the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

[13] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

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JJGJR.: 07-06

Paper No: __

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OFFICE OF PETITIONS

DUANE MORRIS LLP
1667 K STREET NW/STE. 700
WASHINGTON DC 20006-1608

In re Application of	:	
Schaepkens, et al.	:	
Application No. 10/439,506	:	DECISION
Filing Date: 15 May, 2003	:	
Attorney Docket No.: 122184-1	:	

This is a decision on the petition filed on 19 June, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 27 September, 2004, with reply due absent extension of time on or before 27 December, 2004;
- the instant application went abandoned after midnight 27 December, 2004;
- the Office mailed a Notice of Abandonment on 6 April, 2005;

- 16 months after abandonment and nearly a year after Notice thereof, Petitioner filed the original petition (with fee), an amendment[1] as the reply, and made the statement of unintentional delay, however the attorney making the statement had not been of record at the time of the abandonment and so was not in a position to make the statement of his own knowledge–thus, the petition was dismissed on 17 April, 2006;

- the instant petition seeks to address and correct these deficiencies.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

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[1] Erroneously identified at this point in the 17 April, 2006, decision as an "after-final amendment"–however, this was not the controlling issue in that lack of a statement by an applicant/attorney/assignee involved in the matter at the time of abandonment precluded support for the statement of unintentional delay.

[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

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt,[8] and so cannot satisfy the test for diligence and due care.

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

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(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] 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] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[9]))

As to the Allegation
of Unintentional Delay

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

It appears that Petitioner has satisfied the requirements of the regulations at 37 C.F.R. §1.137(b).

CONCLUSION

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

Further correspondence with respect to this matter should be addressed as follows:[10]

The instant application is released to the Examiner in Technology Center 1700 for further processing in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

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

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[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] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. Faxes sent to the old number no longer are routed to the new number. The number (571) 273-8300 is the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

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

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mail Date: 04/21/2010

Applicant	: Brendan McKeon	: DECISION ON REQUEST FOR
Patent Number	: 7644367	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,514	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **949** 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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HARSHAW RESEARCH INCORPORATED
P.O. BOX 418
OTTAWA, KS 66067

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OFFICE OF PETITIONS

In re Application of	:	
Gibler et al.	:	
Application No. 10/439,515	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 52935	:	

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed April 5, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on July7, 2004.

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

This matter is now being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries should be directed to the undersigned at (703) 306-0482. Any telephone inquiries after approximately **September 24, 2004** should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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NORTEL NETWORKS LIMITED
3500 CARLING AVENUE
OTTAWA, ON K2H 8E9
CANADA

Mail Date: 04/21/2010

Applicant	: Cristian Constantinof	: DECISION ON REQUEST FOR
Patent Number	: 7590122	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,531	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1856** 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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MAR 24 2006

MILES YAMANAKA
FULBRIGHT AND JAWORSKI LLP
555 SOUTH FLOWER STREET
FORTY-FIRST FLOOR
LOS ANGELES, CA 90071

In re Application of	:
Markland et al	:
Serial No.: 10/439,532	: DECISION ON PETITION
Filed: 16 May 2003	:
Attorney Docket No.: 1920-338N2	:

This letter is in response to the Petition under 37 C.F.R. 1.181, filed 11 January 2006 requesting the reinstatement of domestic priority and incorporations by reference to each of the parent applications which were previously deleted from the first paragraph of the specification.

BACKGROUND

The instant application is a continuation of 09/591,552. In response to a restriction requirement in 09/591,552 applicants elected claims 1 - 9 and 15, drawn to methods of modulating cell motility. In the Office action mailed 12 September 2002, the examiner concluded that claims 1 - 9 and 15 were not supported under 35 U.S.C. 112, first paragraph, by any of the parent applications upon which priority was claimed under 35 U.S.C. 120. Consequently, the examiner stated that the effective priority date for 09/591,552 under 35 U.S.C. 120 was its own filing date, 08 June 2000. It is noted that the examiner made no requirement of applicants to cancel any claims to domestic priority under 35 U.S.C. 120.

Based upon the examiner's determination that none of the parent applications of 09/591,552 fully meet the requirements under 35 U.S.C. 112, first paragraph, for the current claims directed to a method for decreasing the cell motility, applicants chose to cancel the entire claim to priority under 35 U.S.C. 120. as shown in the first paragraph of the specification of the instant application. This cancellation of priority claims was made in the preliminary amendment filed with the instant application papers on 16 May 2003.

In the instant application the examiner mailed to applicants a first Office action on 18 August 2005. This Office action surprised applicants because it contained three

rejections under 35 U.S.C. 102 over one patent which issued from one of the earlier applications, U.S. Patent Nos. 6,710,030 (SN 09/460,295) and over two publications each of which became prior art only upon the cancellation of the domestic priority claims under 35 U.S.C. 120.

DISCUSSION

It is noted that the M.P.E.P. does not require applicants to cancel claims to domestic priority under 35 U.S.C. 120 upon the examiner's finding that one or more claims cannot be granted priority under 35 U.S.C. 120 because the specification of the parents case(s) does not meet the requirements under 35 U.S.C. 112, first paragraph. Furthermore, it is important to note that the examiner never required that applicants cancel their priority claims under 35 U.S.C.120. Therefore, it is clear that applicants mistakenly interpreted the examiner's statement about lack of priority under 35 U.S.C. 120 to be a requirement to cancel said priority from the specification.

DECISION

For the above reasons, the petition under 37 C.F.R. 1.181, requesting reinstatement of the entire priority claim under 35 U.S.C. 120 and the corresponding incorporations by reference to the parent applications cancelled by the preliminary amendment filed 16 May 2003, is hereby **GRANTED**.

This application is being forwarded for entry of the amendment to the specification accompanying this petition reinserting the domestic priority claims and the incorporation by reference of all parent applications may be properly entered.

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

George C. Elliott

George C. Elliott
Director, Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 06/17/10

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10439536 Patent No.: 7194137

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

You can fax the Director's/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: The first change regarding column 22, line 20 changing "1" to "3" is approved but the second change,regarding column 22 line 20 is not approved it appears that the column or line number is wrong because what they want to change doesn't appear in in col. 22, line 20.

VIKKRAM BALI
SPE

2624
Art Unit

PAGE 1/1 * RCVD AT 6/23/2010 1:10:03 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/4 * DNIS:2709990 * CSID:308 2571 * DURATION (mm-ss):00-42

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MCKEE, VOORHEES & SEASE, P.L.C.
ATTN: PENNSYLVANIA STATE UNIVERSITY
801 GRAND AVENUE, SUITE 3200
DES MONIES IA 50309-2721

MAILED

MAR 23 2010

OFFICE OF PETITIONS

Applicant: Kearing, et al.
Appl. No.: 10/439,578
Filing Date: May 16, 2003
Title: ENCAPSULATION OF AQUEOUS PHASE SYSTEMS WITHIN MICROSCOPIC VOLUMES
Attorney Docket: P06224US01
Pub. No.: US 2004/0052857 A1
Pub. Date: March 18, 2004

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on August 19, 2009 for the above-identified application.

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication contains material errors wherein the preliminary filed on August 1, 2003 was not included in the publication.

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. [1]

The request for corrected publication received on August 19, 2009, was not timely filed under 37 CFR 1.221(b).

The error noted by requestor with respect to the preliminary amendment is <u>not</u> an Office error. The patent application publication does not include a mistake regarding the failure to include the

[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).

preliminary amendment to the specification because patent application publications are not required to include preliminary amendments. See 37 CFR 1.215(a). The "failure to include an amendment is not an Office error." See MPEP 1130(b). The publication accurately reflected the specification as filed.

Since 1997, the Office has encouraged applicants to file patent applications under 35 U.S.C. 111(a), especially continuation and divisional applications, without preliminary amendments by including any desired changes as part of the specification and drawings of the new application. In order to have a patent application publication of a continuation or divisional application contain only a desired set of claims, rather than the set of claims in the prior application, the Office strongly recommended that the continuation or divisional application be filed under 37 CFR 1.53(b) with a new specification containing only the desired set of claims.

Applicant is reminded of his duty to conduct a reasonable inquiry before filing a paper before the Office. See MPEP 410.

Applicants' request for a corrected patent application publication on August 19, 2009, may constitute a "failure to engage in reasonable efforts to conclude processing or examination of the application." See 1.704(c). This determination will be made on or after a mailing of a Notice of Allowance.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221 (a). Such a request for republication "must include a copy of the application 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.

A guide for filing a request for a Pre-Grant Publication, such as a request for republication, may be found on the link below:

http://www.uspto.gov/ebc/portal/tutorials.htm

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system, as a "Pre-Grant Publication".

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 101904

CHRISTOPHER A. WIKLOF
3531 99TH STREET, SE
EVERETT, WA 98208

JUL - 1 2005

In re Application of:	:	
MARC S. WERBLUD	:	
Serial No.: 10/439,603	:	DECISION ON REQUEST TO WITHDRAW
Filed: May 15, 2003	:	FROM RECORD
Attorney Docket No.: **MAG 203-01**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed October 05, 2004.

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

The request meets all the above stated requirements. The request was signed by Christopher A Wiklof, on behalf of himself and all the attorneys/agents of record.

The request is **APPROVED**.

There are no attorneys/agents of record at this time.

All future communications from the Office will be directed to the inventor, Marc S. Werblud, 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: MARC S. WERBLUB
5701 SOUTH UPLAND ROAD
SEATTLE, WA 98118

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Paper No. 6

BUTLER SNOW O'MARA STEVENS & CANNADA
6075 POPLAR AVENUE, SUITE 500
MEMPHIS, TN 38119

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OCT 1 0 2003

OFFICE OF PETITIONS

In re Application of :
Michael Gibson Parsons et al :
Application No. 10/439,604 : NOTICE
Filed: May 16, 2003 :
Attorney Docket No. 021124.47828 :

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to the Office of Initial Patent Examination.

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

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MAY 2 4 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

FARSHAD FARJAMI, ESQ.
26522 LA ALAMEDA AVENUE
SUITE 360
MISSION VIEJO, CA 92691

In re Application of

CHRISTOS CHRYSAFIS

Application No. 10/439,613

Filed: May 15, 2003

For: **DRAM ACCESS FOR MDCT/IDMCT IMPLEMENTATION**

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on April 4, 2005.

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

A Revocation and Power of Attorney was filed April 13, 2005.

Accordingly, the request is **DISMISSED.**

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

Kenneth A Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

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

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MAY 04 2009

OFFICE OF PETITIONS

Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York NY 10022

In re Application of Erik G. Urdang Application No. 10/439,620 Filed: May 16, 2003 Attorney Docket Number: 61575-1022 Title: TECHNIQUE FOR COLLECTING DATA RELATING TO ACTIVITY OF A USER RECEIVING ENTERTAINMENT PROGRAMS THROUGH A COMMUNICATIONS NETWORK	:	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 September 15, 2008, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed October 17, 2007, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on January 18, 2008. A notice of abandonment was mailed on July 21, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

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

With this petition, Petitioner has submitted an amendment and the proper statement of unintentional delay.

The petition fee will be charged to Petitioner's Deposit Account in due course, as authorized in this petition.

The first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment that was received on September 15, 2008 can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status**.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[2] All other inquiries

---

1 See Rule 1.137(d).
2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is

concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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Paper No. 9

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MAR 0 2 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of	:	
Yurt, et al.	:	
Application No. 10/439,622	:	DECISION ON PETITION
Filed: May 16, 2003	:	TO MAKE SPECIAL
For: **AUDIO AND VIDEO TRANSMISSION AND RECEIVING SYSTEM**	:	

This is a decision on the petition filed October 27, 2003 under 37 CFR §1.102(d) to make the application special.

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.

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

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BEYER WEAVER & THOMAS LLP
P.O. BOX 70250
OAKLAND CA 94612-0250

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OFFICE OF PETITIONS

In re Application of
Stefan Roever et al.
Application No. 10/439,629
Filed: May 15, 2003
Attorney Docket No. APLD-P005

: DECISION GRANTING PETITION

This is a decision on the petition, filed June 27, 2005, under 37 CFR 1.137(f) which is treated as a petition to revive the above-identified nonprovisional application under the unintentional provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of a foreign or international application filed on May 15, 2003. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

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

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

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(I) has been rescinded. A projected publication date will be

assigned and will be communicated to the applicants in a separate correspondence, in due course.

The petition fee has been applied.

This matter is being referred to the Pre-Grant Publications Division for a mailing of Notice Regarding Rescission of Non-Publication Request.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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CALFEE HALTER & GRISWOLD, LLP
800 SUPERIOR AVENUE
SUITE 1400
CLEVELAND, OH 44114

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OFFICE OF PETITIONS

In re Application of
Daniel Ekgirt, et al.
Application No. 10/439,630
Filed: May 16, 2003
Attorney Docket No. 27708/04040

ON PETITION

This is a decision in response to the petition, filed August 27, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The person signing the petition requests a change of correspondence address to the address given in the petition. There is, however, no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature of John T. Kalnay appearing on the petition 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. However, if Mr. Kalnay 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.

A review of the record discloses that the application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed January 18, 2007. This decision precedes the mailing of a Notice of Abandonment. On August 27, 2007, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay[1].

The petition is **GRANTED**.

The application is being referred to Technology Center AU 3768 for consideration of the amendment filed August 27, 2007.

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, 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) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOHN T. KALNAY
MCDONALD HOPKINS CO., LPA
600 SUPERIOR AVENUE, E., SUITE 2100
CLEVELAND, OH 44114

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SUMMIT ONE, SUITE 510
INDEPENDENCE, OH 44131

Mail Date: 04/20/2010

Applicant	: Daniel Elgort	: DECISION ON REQUEST FOR
Patent Number	: 7620440	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/439,630	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1585** 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 : 2/16/2006

TO SPE OF : ART UNIT 3700 (3743)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,988,534

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.

Okay to enter data in the Related U.S. Application Data and in item (56) Other Publications, as requested in C of C?

Ernest C. White, LIE305-8339
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:

Eric Frahl
SPE

3753
Art Unit

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FAY SHARPE/LUCENT
1228 Euclid Avenue, 5th Floor
The Halle Building
Cleveland, OH 44115-1843

Mail Date: 05/26/2010

Applicant	: Marianne Picha	: DECISION ON REQUEST FOR
Patent Number	: 7630488	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/439,646	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1699** 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. 6

JONES DAY
555 WEST FIFTH STREET
SUITE 4600
LOS ANGELES CA 90013-1025

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JUN 2 4 2004

OFFICE OF PETITIONS

In re Application of McGrath et al. Application No. 10/439,652 Filed: May 15, 2003 Attorney Docket Number: 949797-100024US	: : : : : :	DECISION ON PETITION

This is a decision on the "CONTINGENT PETITION UNDER 37 C.F.R. 1.78(a)(3) TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 35 U.S.C. 120 FOR THE BENEFIT OF A PRIOR-FILED APPLICATION," filed October 24, 2003.

The petition is **granted**.

Preliminarily, petitioner's contention that the petition is not required to be entitled to benefit of the priority claim must be addressed. It is undisputed that the priority claim reference as required by 35 U.S.C. 120 and paragraph (a)(2) of 37 C.F.R. 1.78, as submitted on petition, was not timely submitted within the later of 4 months from the actual filing date of the application or 16 months from the filing date of the application for which a claim for benefit is made under 1.78(a)(2). Submission of the preliminary amendment filed September 12, 2003 is acknowledged. However, as this amendment amended the application to include specific reference to the wrong prior-filed application, it did not satisfy § 1.78(a)(2) as to the correct reference. It did not correctly identify one of the prior applications by its application number, as required[1]. Accordingly, the instant petition under § 1.78(a)(3) is required for the relief requested.

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] Given this error, the Office did not recognize the benefit claim.

1.78(a)(3) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
>
> **(2)** the surcharge set forth in § 1.17(t); and
>
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed on May 15, 2003, and was pending at the time of the filing of the instant petition. References to the prior-filed nonprovisional applications have been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii). This second preliminary amendment was filed with this petition on October 24, 2003. The surcharge under § 1.17(t) has been charged to Deposit Account No. 50-2468, as authorized. Petitioner states that "the entire delay between September 15, 2003, the date the claim was due under 37 C.F.R. 1.78(a)(2)(ii), and the date of this submission was unintentional."

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the references to the prior-filed applications were submitted during the pendency of the instant nonprovisional application. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) 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(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt

accompanying this decision on petition includes the prior-filed application(s) should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

The application file is being forwarded to the Office of Initial Patent Examination to await reply to the "Notice to File Missing Parts of Nonprovisional Application" mailed July 16, 2003, or, if filed, for association of the reply with the instant application. This decision in no way tolls the period for reply to the Notice. **Failure to timely reply will result in abandonment of this application.** (After completion of pre-examination processing, the application will be forwarded to Technology Center Art Unit 3711 for examination, including consideration by the Examiner of applicant's claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the prior-filed nonprovisional applications.)

Telephone inquiries concerning this matter should be directed to Senior Petitions Attorney Nancy Johnson at (703) 305-0309.

Charles A. Pearson
Director
Office of Petitions

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Daniel D. Chapman, Esq.
Jackson Walker, L.L.P.
Suite 2100
112 E. Pecan Street
San Antonio, TX 78205

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FROM DIRECTORS OFFICE

FEB 24 2006

TECHNOLOGY CENTER 3600

In re application of
Stan Leffew, et al.
Application No. 10/439,661 :
Filed: May 16 2003 :
For: ELEVATOR FOR A SCRAPER :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on August 4, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Item A) above.

As to Item A), Attorney Richard Ruble, Registration Number 45,720 was appointed as attorney of record initially, however, is not included in the request. If less than all the attorneys wish to withdraw and the remaining attorney wish to retain power, any renewed request must so state.

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(703) 308-2121
Facsimile No.: (703) 605-0586

RAR/dcg: 2/25/05

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Corporate Patent Department
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Chesterfield MO 63006

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SEP 19 2007

OFFICE OF PETITIONS

In re Application of
PAMELA T. MANNING
Application No. 10/439,669
Filed: 05/16/2003
Attorney Docket No. 01134/1 US

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 13, 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 March 15, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No proper extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 15, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment and an Election; (2) the petition fee; and (3) a proper statement of unintentional delay.

Petitioner submitted a $2,160.00 extension of time fee with the present petition. Pursuant to 37 CFR 1.136, a request for an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Therefore, the $2,160.00 extension of time fee is inappropriate and will be credited to petitioner's Deposit Account.

This matter is being forwarded to Technology Center AU 1617.

Telephone inquiries concerning this matter 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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AUSTIN, TX 78759

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OFFICE OF PETITIONS

In re Application of	:	
Robert Alexander Jones, et. al.	:	
Application No. 10/439,685	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 800745	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on January 4, 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 on October 3, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $700 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to 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

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Paper No. 4

Schiff Hardin & Waite
6600 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606-6473

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MAR 0 2 2004

OFFICE OF PETITIONS

In re Application of	:	
Gunter Waitl, et al.	:	
Application No. 10/439,695	:	DECISION GRANTING
Filed: May 16, 2003	:	PETITION
Attorney Docket No. P00,1086-01	:	

This is a decision on the petition filed August 18, 2003, under 37 CFR 1.10(e), which is being treated as a petition under 37 CFR 1.53, for the reason stated below, requesting that the above-identified application maintain its filing date of May 16, 2003.

The petition is **GRANTED**.

37 CFR 1.10(e) sets forth procedures for filing a petition to the Commissioner to accord a filing date as of the date of deposit with the USPS, where correspondence deposited as "Express Mail" is never received by the Office. Since the application papers were received in the Office, a petition under this provision is not the appropriate relief for the instant application.

The application was filed on May 16, 2003. However, the Office of Initial Patent Examination mailed a "Notice of Incomplete Provisional Application" on July 23, 2003 stating, "the application was deposited without drawings."

Petitioner argues that the four pages of drawings, asserted to have been missing, were included as a part of the Substitute Specification submitted. In support, petitioner provides a copy of the "Express Mail" label used to submit the original application, a copy of the originally deposited papers with the "Express Mail" number on them, and the Certificate of Express Mail.

It is obvious that the application was deposited with the U. S. Postal Service on May 16, 2003, but there is no evidence that the specification contained the missing four pages of drawings. The mere filing of a Patent Application Transmittal and a copy of the application papers does not

establish that all of the application papers were received in the USPTO. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The Office has a well-established practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt, which itemizes and properly identifies the papers that are being filed, serves as *prima facie* evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503. No postcard receipt has been submitted in this case.

Nevertheless, the application is a Divisional application of 09/581,585 and contains a statement "the parent application is herein incorporated by reference." MPEP 201.06(c) in pertinent part states:

> "In a continuation or divisional application, the safeguard (petition and fee under former 37 CFR 1.60(b)) concerning the filing of an application lacking all of the pages of the specification or sheets of drawings of the prior application has not been retained in 37 CFR 1.53(b) since the specification and drawings of a continuation or divisional application are not limited to a reproduction or a 'true copy' of the prior application. As a safeguard, however, an applicant may incorporate by reference the prior application by including, in the continuation or divisional 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 incorporation by reference statement can only be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application."

In view of the above, the application is entitled to the current filing date.

MPEP 201.06(c)(B) in pertinent part states:

> "If a continuation or divisional application as originally filed is entitled to a filing date despite the omission of a portion of the prior application(s), applicant will be permitted to add the omitted material by way of an amendment provided a statement was included in the application as originally filed that incorporates by reference the prior application(s).

The "Notice of Incomplete Nonprovisional Application" was mailed in error. A Notice of Omitted Items should have been mailed in this application. The Office apologizes for any inconvenience this error may have caused petitioner.

It is also noted that the application contains one or more method claims. It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). See MPEP 601.01(f). As such,

This application file is being forwarded to the Office of Initial Patent Examination Division for further **processing maintaining the filing date of May 16, 2003.** Thereafter, the application file will be forwarded to Technology Center 2800 for examination in due course.

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

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SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319

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OFFICE OF PETITIONS

In re Application of :
Mark G. Romo :
Application No. 10/439,698 :
Filed: May 16, 2003 :
Patent No: 6,883,380 :
Issued: April 26, 2005 :
Attorney Docket Number: R11.12-0786 :

This is a decision on the petition for correction of assignee name, filed October 21, 2005, to correct the assignee data in the above-identified patent after payment of the issue fee. The petition is properly treated as a request under 37 CFR 3.81(b)[1]. The delay in treating this petition is regretted.

The Petition is **granted**.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The application is being referred to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction.

Derek L. Woods
Attorney
Office of Petitions

[1] See, 1283 OG 148 22 June 2004, 69 Fed. Reg. 29865 26 May 2004

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1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

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APR 0 3 2006

OFFICE OF PETITIONS

In re Application of	:	
Fehr, et al.	:	
Application No. 10/439,702	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. AS00005	:	
For: POWER AND COMMUNICATION ARCHITECTURE FOR A VEHICLE		

This is a decision on the petition, filed February 10, 2006, under 37 CFR 1.137(b) to revive the above-identified application.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the July 26, 2005 non-final Office action. No response being received and no extensions of time being obtained, this application became abandoned on October 27, 2005. The filing of the instant petition precedes the mailing of A Notice of Abandonment.

Applicants have submitted an amendment in reply to the July 26, 2005 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 26, 2005 non-final Office action, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 2835 for consideration of the amendment filed on February 10, 2006.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Richard B. Tremblay
5 Keller Place
Boise, ID 83702

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OFFICE OF PETITIONS

In re Application of Tremblay :
Application No. 10/439,707 :
Filing Date: May 16, 2003 :
For: Integrated Bi-modal Wheel Assembly :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(a), filed August 22, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Facts:

A Notice of Allowance and a Notice of Allowability were mailed on December 7, 2005. The Notice of Allowance required replacement drawings.

The Notices set a three-month period of time for petitioner to file a response.

On January 24, 2005, the Office received a check for the issue and publication fees. The issue fee transmittal was signed and dated January 18, 2005, by petitioner.

Replacement drawings were not received on or before March 7, 2005. Therefore, the application became abandoned at midnight on March 7, 2005.

A Notice of Abandonment was mailed on August 3, 2005.

Petitioner alleges replacement drawings were timely filed during December of 2004.

Analysis:

A grantable petition under 37 CFR 1.137(a) must be accompanied 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.

Te 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).

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)

Petitioner has provided no proof that the drawings were mailed in compliance with 37 CFR 1.8 or 1.10. In fact, petitioner has provided no evidence proving the drawings were filed during December of 2004. The Office notes the issue fee was not mailed until on or after January 18, 2005.

Petitioner's failure to file the reply at issue in compliance with 37 CFR 1.8 or 1.10 precludes a finding that the delay was unavoidable. A "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the PTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay.[1]

A lack of knowledge of, or failure to understand, a PTO rule, the content of the MPEP, or an Official Gazette notice will not constitute unavoidable delay.[2] Petitioner is responsible for knowing the applicable patent statutes and rules. A reasonable and prudent person with knowledge of the statutes and rules, would have filed the reply in compliance with 37 CFR 1.8 or 1.10. Compliance with 37 CFR 1.8 requires the use of a certificate of mailing (NOT the same as certified mail). Compliance with 37 CFR 1.10 requires the use of express mail. An excerpt from the MPEP is enclosed which explains the requirements of 37 CFR 1.8 and 1.10.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee ($775 for a small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. A copy of a blank petition form is enclosed for petitioner's convenience.

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 in so far as the zip code of the official correspondence address is 83716. If appropriate, a request to change the address of record

---

[1] The procedures set out in the PTO's regulations are designed to provide the type of direct evidence needed to prove when and to where a lost amendment [or other paper] was sent. Had plaintiff's counsel followed these procedures, as a 'prudent and careful man' would have done in conducting 'his most important business,' then he would have been able to provide sufficient evidence to support a showing of unavoidable delay." Krahn v. Commissioner of Patents and Trademarks, 15 U.S.P.Q.2d (BNA) 1823 (E.D. Va. 1990).

[2] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D. D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D. D.C. 1985) (Plaintiffs, through their counsel's actions, **or their own**, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, unless a request to change the address of record is filed, the Office will mail all future correspondence solely to the address of record using zip code 83716.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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

Attached: Change of Address Form PTO/SB/122
Petition under 37 CFR 1.137(b) form PTO/SB/64
Discussion of Rule 8 and Rule 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

Richard B. Tremblay
5 Keller Place
Boise, ID 83716

COPY MAILED
MAR 10 2006
OFFICE OF PETITIONS

In re Application of Tremblay :
Application No. 10/439,707 :
Filing Date: May 16, 2003 :
For: Integrated Bi-modal Wheel Assembly :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed January 3, 2006, to revive the above-identified application.

The petition is **granted**.

A Notice of Allowance and a Notice of Allowability were mailed on December 7, 2005. The Notice of Allowance required replacement drawings. Replacement drawings were not received on or before March 7, 2005. Therefore, the application became abandoned at midnight on March 7, 2005. A Notice of Abandonment was mailed on August 3, 2005.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The prior decision incorrectly stated the fee for a petition under 37 CFR 1.137(b) was $775. The correct amount is $750. Only $750 was charged to petitioner's credit card.

The Office of Publications will be informed of the instant decision so that steps may be taken to issue the application as a patent.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Dec-06

MORGAN & FINNEGAN, L.L.P.
3 WORLD FINANCIAL CENTER
NEW YORK NY 10281-2101

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DEC 0 6 2006
OFFICE OF PETITIONS

In re Application of :
Masaki et al. :
Application No. 10/439,711 : DECISION ON PETITION
Filed: 05/16/2003 :
Atty Docket No. 1232-5039 :

This is a decision on the petition filed on 28 August, 2006, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 29 March, 2006, for failure to timely file a proper response to the Office communication mailed on 28 October, 2005, which set a one (1) month shortened statutory period for reply. A one (1)-month extension of time

[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)).

was submitted on 30 November, 2005, along with an amendment which was found not to be responsive. On 21 March, 2006, a four (4) month extension of time was filed, along with a corrected amendment. On 28 June, 2006, however, a Notice of Abandonment was mailed, stating that the reply filed on 21 March, 2006, does not constitute a proper reply, or a bona fide attempt at a proper reply to the non-final rejection.

Petitioners have filed an amendment as the required reply.

This application is being referred to Technology Center Art Unit 2872 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 5

M. David Galin
Renner, Otto, Boisselle & Sklar, LLP
Nineteenth Floor
1621 Euclid Avenue
Cleveland, OH 44115-2191

COPY MAILED

OCT 06 2003

OFFICE OF PETITIONS

In re Application of	:	DECISION ACCORDING
Davis, Ribich, Harvey and Kasam	:	STATUS UNDER
Application No. 10/439,727	:	37 CFR 1.47
Filed: May 16, 2003	:	
Attorney Docket No. CSGCP0119US	:	
For: END SEAL DESIGN FOR TEMPERATURE SENSING PROBES AND HEATERS	:	

This is in response to the petition under 37 CFR 1.47(a) filed August 4, 2003.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 5

Black & Decker Inc.
701 E. Joppa Road, TW-199
Towson, MD 21286

COPY MAILED

OCT 0 9 2003

OFFICE OF PETITIONS

In re Application of	:
Watson et al.	: DECISION ACCORDING
Application No. 10/439,745	: STATUS UNDER
Filed: May 16, 2003	: 37 CFR 1.47
Attorney Docket No. TN-3019	:
For: LASER LEVELING SYSTEM	:

This is in response to the petition under 37 CFR 1.47(a) filed September 26, 2003.

The petition is granted.

Petitioner has shown that the non-signing inventor, Luis F. Torres, has refused to join in the filing of the above-identified application after having been presented with the application papers or cannot be located.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 6

Luis F. Torres
2050 SW Expressway, #92
San Jose, CA 95126

COPY MAILED

OCT 0 9 2003

OFFICE OF PETITIONS
Letter

In re Application of :
Watson et al. :
Application No. 10/439,745 :
Filed: May 16, 2003 :
Attorney Docket No. TN-3019 :
For: LASER LEVELING SYSTEM :

Dear Mr. Torres:

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 & Decker Inc.
701 E. Joppa Road, TW-199
Towson, MD 21286

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

WEIDE & MILLER, LTD.
7251 W. LAKE MEAD BLVD.
SUITE 530
LAS VEGAS NV 89128

COPY MAILED

DEC 1 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Dale Otho Hill	:	
Application No. 10/439789	:	DECISION ON PETITION
Filing Date: 05/16/2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. SMARTSHOES03-01	:	

This is a decision on the "Petition to accept an unintentionally delayed benefit claim under 35 U.S.C. §120," filed August 30, 2007for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed Amendment. The petition is properly treated as a petition under 37 CFR 1.78(a)(3)

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 Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item **(3).**

As to item (3), a statement that the entire delay between the date the claim was due under 37 CFR 1.78, paragraph (a)(2)(ii), and the date the claim was filed was unintentional. Applicant files the petition and provides that at the time the application was filed, the inventor, Mr. Hill, was in poor health and this may have attributed to this unintentional omission in the priority claim. This, Petitioner asserts, is supported by the declaraion of Robert B. Zeims. Mr. Zeims is the Executive Vice president, General Counsel and Secretary with Progressive Gaming

International Corporation ("PGIC"). Office records reveal that PGIC, under its former name, Mikohn Gaming Corporation, recorded an assignment in the present application on February 14, 2005, executed by Mr. Hill on December 7, 2004. Mr. Zeims states in his declaration, that "[e]ither immediately before the present application was filed or soon thereafter, Mr, Hill began seeking a buyer for a portion of his patent portfolio including this application. In or about 2004, PGIC purchased this application as well as its beneficial parent chain...." Mr. Zeims further states that "after the present application was filed, but before the application was transferred to PGIC, Mr. Hill appointed new counsel (not present counsel) to prosecute the application." No statement from Mr. Hill has been provided.

In this instance, the claim was due within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. See, 37 CFR 1.78(a)(2)(ii). Applicant has accounted for the period of delay from when Mr. Zeims became a proper party in interest in the application; however, Applicant is not in a position to state on behalf of Mr. Hill, whether the delay in claiming priority within four months of the application filing date, and within 16 months of the earliest claimed priority date, was unintentional. Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition and a statement from Mr. Hill, that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Director 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 attorney Derek Woods at (571) 272-3232.

Anthony Knight
Supervisor
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

WEIDE & MILLER, LTD.
7251 W. LAKE MEAD BLVD.
SUITE 530
LAS VEGAS NV 89128

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JUL 01 2008

OFFICE OF PETITIONS

In re Application of	:	
Dale Otho Hill	:	
Application No. 10/439789	:	DECISION ON PETITION
Filing or 371(c) Date: 05/16/2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. SMARTSHOES03-01	:	

This is a decision on the Renewed Petition under 37 C.F.R. § 1.78(a)(3), filed April 14, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed August 30, 2007.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the

benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A Corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Derek Woods at (571) 272-3232. 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 3714 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Anthony Knight
Supervisor
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/439,789	05/16/2003	3714	732	SMARTSHOES03-01	41	7

CONFIRMATION NO. 1826

CORRECTED FILING RECEIPT

32856
WEIDE & MILLER, LTD.
7251 W. LAKE MEAD BLVD.
SUITE 530
LAS VEGAS, NV 89128

OC000000026732875

Date Mailed: 06/24/2008

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)

Otho Dale Hill, Las Vegas, NV;

Power of Attorney: The patent practitioners associated with Customer Number 000032856

Domestic Priority data as claimed by applicant

This application is a CIP of 09/905,478 07/13/2001 PAT 6,582,301
which is a CIP of 09/528,577 03/20/2000 PAT 6,299,536
which is a CON of 09/031,321 02/26/1998 PAT 6,039,650
which is a CIP of 08/543,908 10/17/1995 PAT 5,722,893

Foreign Applications

If Required, Foreign Filing License Granted: 07/08/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/439,789**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

System including card game dispensing shoe and method

Preliminary Class

463

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).

Express Mail No. EV156970658US
PATENT
Attorney Docket No.: 11852US.08

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:		Confirmation No.:	NA
Inventor:	Rodolfo F. Garcia	Group Art Unit:	NA
Appl. No.:	Continuation of Appl. ~~09/410,369~~ 10/439819	Examiner:	NA
Filed:	Herewith ISSUED		
Title:	TEST METHOD AND APPARATUS FOR SOURCE SYNCHRONOUS SIGNALS		

Petition is moot
JGD 9/14/04

PETITION TO MAKE SPECIAL FOR ACCELERATED EXAMINATION (MPEP § 708.02, VIII)

MAIL STOP PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
OCT 2 9 2003
Technology Center 2800

Sir:

Applicant hereby petitions to make this application special for Accelerated Examination, under MPEP § 708.02, VIII (a)-(e):

(a) The fee of $130.00 set forth in 37 CFR 1.17(i), § 1.102 (to make application special) is to be paid by charging Deposit Account 190603 this amount and any other amounts due.

(b) All currently pending claims 1-26 are directed to a method and apparatus of a single invention.

(c) A pre-examination manual search was performed by a professional searcher in classes/subclasses 324/606; 702/89, 117, 125, 126; 714/744, 811. Computer assisted virtual subclass keyword searching was also performed by the professional searcher.

Received from < 3036293450 > at 10/29/03 11:32:40 AM [Eastern Standard Time]

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

CARL L. JOHNSON
JACOBSON AND JOHNSON
ONE WEST WATER STREET, SUITE 285
ST. PAUL, MN 55107-2080

COPY MAILED

MAR 2 6 2004

OFFICE OF PETITIONS

In re Application of :
Robert Monson et al :
Application No. 10/439,842 : NOTICE
Filed: May 19, 2003 :
Attorney Docket No. 5727EA255,256,257

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center AU 3632.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KLARQUIST SPARKMAN
121 S.W. SALMON STREET, SUITE #1600
ONE WORLD TRADE CENTER
PORTLAND OR 97204-2988

COPY MAILED

OCT 0 3 2005

OFFICE OF PETITIONS

In re Application of	:
Christophe Combadiere et al	: DECISION ON PETITION
Application No. 10/439,845	: UNDER 37 CFR 1.78(a)(3)
Filed: May 15, 2003	:
Attorney Docket No. 4239-64855	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 16, 2005, to accept an unintentionally delayed claim under 35 U.S.C.§ §120 and 365(c) for the benefit of the prior-filed PCT Application No. PCT/US97/09586, filed May 28, 1997, set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed June 16, 2005, fails to state the relationship of PCT Application No. PCT/US97/09586, filed May 28, 1997, to the instant application.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment[1] stating the relationship of the prior-filed 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 Window located at:

Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

[1] *Note* 37 CFR 1.121

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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JUL 0 6 2006

OFFICE OF PETITIONS

In re Application of
Christophe Combadiere et al
Application No. 10/439,845
Filed: May 15, 2003
Attorney Docket No. 4239-64855

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed December 7, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/US97/09586, filed May 28, 1997, as set forth in the accompanying amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. §§ 120 and 365(c) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the application is entitled to the benefit of the prior-filed application. In order for the application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and

***365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date*. Further, it is noted that the priority claim amendment includes an incorporation by reference statement. Therefore, the examiner should make a determination as to whether the incorporation by reference statement is proper in this case.**

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to the examiner of Technology Center Art Unit 1649 for consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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PORTLAND OR 97204-2988

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OFFICE OF PETITIONS

In re Application of :
Feng, et al. :
Application No. 10/439,845 : DECISION
Filed: 15 May, 2003 :
Attorney Docket No. 4239-64855-01 :

This is a decision on the petitions, filed 7 April, 2008, 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, and alternatively, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.181 is **DISMISSED**, and the petition under 37 C.F.R. §1.137(b) is **GRANTED**, and the petition fee is charged to Deposit Account 02-4550 as authorized.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner's attention always is drawn to the guidance in the Commentary at MPEP §711.03(c).

A proper showing (for relief under 37 C.F.R. §1.181):

- (as to non-receipt) requires at the very minimum: a statement from practitioner stating that the Office action was not received by the practitioner; a statement from the practitioner attesting to the fact that a search of the file jacket and docket records for the application indicates that the Office action was not received with a copy of those docket records; and a brief statement of the calendaring process and a copy of the due-date (calendar) docket record(s) where the nonreceived Office action would have been scheduled for reply had it been received must be attached to and referenced in the practitioner's statement; alternatively,

- (for a showing of timely and proper reply) requires a statement from practitioner stating that the reply was timely submitted by the practitioner; and copies of all papers submitted as and/or in support of that reply, with/and a copy of the date-stamped receipt card, Office FAX receipt acknowledgement (not simply Petitioner's FAX transmittal), or EFS receipt acknowledgment from the Office, along with practitioner's attestation as to the correctness/completeness of his/her records.

The showing(s) must include that of the person(s) with first-hand knowledge and an acknowledgment by the Petitioner that he/she has reviewed that information in compliance with his/her duty of candor to the Office. Petitioner has failed to make the showings of search and non-discovery with the documentary presentations discussed herein (and set forth in the footnote, *infra*, and the showings as to docketing and calendaring, again with documentary support—all in support of the averment of nonreceipt. (*See*: MPEP §711.03(c).)[1]

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[1] The Commentary at MPEP §711.03(c) provides in pertinent part:

*****

I. PETITION TO WITHDRAW HOLDING OF ABANDONMENT

A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 C.F.R. 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 C.F.R. 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

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 C.F.R. 1.137(a) based on unavoidable delay; and (2) a petition under 37 C.F.R. 1.137(b) based on unintentional delay.

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 **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<

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).

Petitioner presents no averment in support of the petition under 37 C.F.R. §1.181, save that he thought he did not have to respond.

The Examiner mailed an *ex parte Quayle* action, and requested therein that Petitioner suggest an interference.

Thus, while Petitioner was permitted to chose to suggest or not, Petitioner had to chose—and , thus, had to respond.

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).

B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed

37 C.F.R. 1.10(c) through 1.10(e) and 1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. 1.10(c), (d), (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP § 512. As stated in 37 C.F.R. 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous 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.

C. Treatment of Untimely Petition To Withdraw Holding of Abandonment

37 C.F.R. 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 C.F.R. 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 C.F.R. 1.181(f).
Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 C.F.R. 1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

*****

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

It appears that Petitioner has satisfied the requirements of the regulation.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the *ex parte Quayle* action mailed on 28 June, 2007, with reply due under a non-extendable deadline on or before (Monday) 30 July, 2007.

The application went abandoned by operation of law after midnight 28 July, 2007.

The Office mailed the Notice of Abandonment on 7 February, 2008.

On 7 April, 2008, Petitioner filed the instant petition, asserting that the reply did not have to be filed because he chose not to suggest an interference. Petitioner appears to mis-appreciate his duty of a proper and timely reply. As noted above, the Examiner invited the Petitioner to suggest an interference, however, the Examiner did not suggest, and—contrary to Petitioner's expressed reading of the Manual of Patent Examining Procedure—no Office policy suggests that Petitioner has the choice of whether or not to reply. Once the Examiner mails an Office action, Petitioner is required to reply, and his failure to do so timely and properly results in the abandonment of the application under the statute. (*See*: 35 U.S.C. §133.)

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]

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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).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

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).

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

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.[5] (See, also, the commentary at MPEP §711.03(c)(I)(A) and (B).)

And the regulation requires that relief be sought within two (2) months of the act complained of.

The petition fails to satisfy the above-stated requirements in that Petitioner failed make the showing required.

(*See* MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," alternative "A Reply Was Timely Filed"; see also: "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).)

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[3] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[4] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[5] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181is **dismissed**, however, the petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center/AU 1649 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Technology Center/AU in response to this decision—and it is noted that all inquiries with regard to that change in status should be directed to the Technology Center/AU where that change of status must be effected.

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./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of :
Feng, et al. :
Application No. 10/439,845 : DECISION
Filed: 15 May, 2003 :
Attorney Docket No. 4239-64855-01 :

This is a decision on the petitions, filed 10 April, 2008, considered as a petition under 37 C.F.R. §1.183 requesting waiver of provisions of the regulations at 37 C.F.R. §1.48 in an effort to alter the inventive entity/correct inventorship.

The petition under 37 C.F.R. §1.183 is **GRANTED**, and the petition fee is charged to Deposit Account 02-4550 as authorized; the petition under 37 C.F.R. §1.48 is **GRANTED**.

The regulations at 37 C.F.R. §1.183 set forth the conditions required for their invocation:

> **§1.183 Suspension of rules.**
>
> 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). (Emphasis supplied.)

The regulations at 37 C.F.R. §1.48 set forth the conditions required for their invocation (in pertinent part):

§1.48 Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. §116.

(a) *Nonprovisional application after oath/declaration filed.* If the inventive entity is set forth in error in an executed §1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventor or inventors as required by §1.63 or as permitted by §§1.42, 1.43 or §1.47;

(4) The processing fee set forth in §1.17(i); and

(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see §3.73(b) of this chapter).

***

BACKGROUND

Petitioner seeks to alter the inventive entity/correct inventorship in the instant nonprovisional application.

Petitioner does not indicate that the instant petitions are submitted following the cancellation of claims to delete elements of the claimed invention contributed by the persons Petitioner seeks to delete from the inventive entity. Thus, the provisions of 37 C.F.R. §1.48(a)—and not the less demanding provisions of 37 C.F.R. §1.48(b)—are applicable.

Rather than file a continuing application under 37 C.F.R. §1.53 (*see*: MPEP §201.03), Petitioner has presented a petition under 37 C.F.R. §1.48, paid the fee, and submitted and oath under 37 C.F.R. §1.63 of the averred new inventive entity and a consent of the averred assignee consistent with the provisions of 37 C.F.R. §3.73(b).

The remaining requirement is the presentation of 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 " (Item (2), above). The requirement

ensures both due process to and compliance with duties of candor by all parties to the transaction before the Office. It is this requirement from which Petitioner seeks a waiver.

The Petitioner submitted affidavits from the previously listed members of the inventive entity and arguments in support alteration of the inventive entity/correction of inventorship on 10 April, 2008, contemporaneously with the filing of the instant petitions.

On 28 May, 2008, the previously listed members of the inventive entity whom Petitioner seeks to delete submitted their comments in opposition in a single paper jointly signed.

Thus, the persons whom Petitioner seeks to have deleted from the inventive entity were afforded an opportunity to be heard, and all persons making representations to the Office do so with the appreciation of the adverse consequences of a failure in candor before the Office.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

Upon his review of the submitted materials, the Examiner has indicated that if the petition under 37 C.F.R. §1.183 was granted he "would have no reason to deny the [§]1.48(a) petition."

Accordingly, the petition under 37 C.F.R. §1.183 is **granted**, and upon consultation with the Examiner the petition under 37 C.F.R. §1.48 is **granted**.

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.

The instant application is released to Technology Center/AU 1649 for further processing in due course.

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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).

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/ John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[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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United States Patent and Trademark Office
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AUG 26 2009

OFFICE OF PETITIONS

SWISS TANNER, P.C.
P.O. BOX 1749
FOUR MAIN STREET, SUITE 100
LOS ALTOS, CA 94022

In re Application of	:	
Keelung Hong et al	:	
Application No. 10/439,856	:	DECISION ON PETITION
Filed: May 15, 2003	:	TO WITHDRAW
Attorney Docket No. 056367-1551	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed July 14, 2009.

The request is **APPROVED**.

A review of the file record indicates that Antoinette F. Konski: (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, Antoinette F. Konski has been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

Telephone inquires concerning this decision should be directed to Irvin Dingle at 571-272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Antoinette F. Konski
975 Page Mill Road
Palo Alto, CA 94304-1013

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072006

Powell D. Nyachoto
2804 Stratford Drive
San Ramon, CA 94583

AUG - 1 2006

In re Application of:
Powell D. Nyachoto
Serial No.: 10/439,862
Filed: May 19, 2003
For: BICYCLE DERAILER GENERATOR

DECISION ON PETITION

This is a response to the communication filed July 11, 2005, which is being treated as a petition to withdraw the holding of abandonment of the above-identified application. No fee is required.

The petition is GRANTED.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action of September 29, 2004. A Notice of Abandonment was mailed on May 3, 2005.

A review of the file record indicates that a response was timely filed on December 22, 2004. The response consists of 8 pages of a specification, 1 claim, a prior art listing and an abstract. The response was apparently not associated with the application file at the time the notice of abandonment was prepared and mailed. Since the response was timely filed, the application was not abandoned in fact.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to the applicant is regretted.

The examiner will review the response and take appropriate action.

Any inquiry regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

Richard K. Seidel, Group Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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T. Helen Payne
Aventis Pasteur, Inc.
Intellectual Property, Knerr Bldg.
One Discovery Drive
Swiftwater PA 18370

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FEB 25 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Egen et al. :
Application No. 10/439,878 :
Filed: May 16, 2003 :
Attorney Docket Number: API-02-049-US

This is a decision on the petition under 37 CFR 1.137(b), filed January 21, 2005, 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 May 19, 2004. A Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on July 8, 2004 which set an extendable reply period of one month. This application became abandoned on August 9, 2004. A Notice of Abandonment was mailed on January 18, 2005.

This Petition is hereby **Granted**.

A five (5) month extension of time was requested with the instant petition. However, pursuant to 37 CFR 1.136 (a), an extension of time 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) Petitioner is ineligible for any extensions of time, nor is an extension of time fee required to revive the application. Accordingly, $2,160.00 will be credited .

The office hereby acknowledges the receipt of the Amendment submitted with the instant petition.

This application is being forwarded to Technology Center 1600 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/23/2005

TO SPE OF : ART UNIT 2800(2854)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,829,988

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.

*** okay to enter changes in cofc request ?**

Ernest C. White, LIE305-8339
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:

Andrew Hirshfeld 2854
SPE **Art Unit**

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APR 0 5 2006

OFFICE OF PETITIONS

FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE - 10TH FLOOR
NEW YORK NY 10151

In re Application of	:	
Hajime Nagano et al	:	
Application No. 10/439,896	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 790001-2032	:	

This is a decision on the petition, filed March 27, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 27, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2811 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).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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BUCHANAN INGERSOLL, P.C.
ONE OXFORD CENTRE, 301 GRANT STREET
20TH FLOOR
PITTSBURGH, PA 15219

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OFFICE OF PETITIONS

In re Application of :
Harry Gruber, et al. :
Application No. 10/439,899 :
Filed: May 15, 2003 :
Attorney Docket No. 51051-000011 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 2, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed July 3, 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application matter 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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OFFICE OF PETITIONS

Daniel J. Meaney, Jr.
Post Office Box 22307
Santa Barbara, CA 93121

In re Application of :
Takahagi, et al. : DECISION ON PETITION
Application No. 10/439,903 :
Filed: May 16, 2003 :
Docket No.: 5561.7 413438/017 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 3, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned April 19, 2005 for failure to timely submit the issue fee in response to the Notice of Allowance and Issue Fee(s) Due ("Notice") mailed January 18, 2005. The Notice set a three month statutory period for reply. Notice of Abandonment was mailed May 25, 2005.

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 submit a proper reply to the Notice is accepted as having been unintentionally delayed.

This application will be forwarded to the Office of Patent Publication for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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

ANDERSON KILL & OLICK
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020-1182

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of :
Kim et al. :
Application No. 10/439,908 : ON PETITION
Filed: May 16, 2003 :
Attorney Docket No. DE1468 :

This decision concerns the August 11, 2003 "Response to Notice of Omitted Items and Petition to Receive Original Filing Date" which, in essence, requests that the July 24, 2003 "Notice of Omitted Item(s) in a Nonprovisional Application" for the above-referenced application ("7/24/03 Notice") be withdrawn. The submission is being properly treated as a petition under 37 CFR 1.53.

The petition is **GRANTED.**

The application was deposited on May 16, 2003. The 7/24/03 Notice states that a filing date has been accorded this application, but a drawing (Figure 5) described in the specification appeared to have been omitted from the filed application. The petition then followed, asserting that the allegedly omitted Figure 5 was filed with the other application papers on May 16, 2003.

The Office has located the drawing for Figure 5 in the application file. The petition is thus granted. The 7/24/03 Notice is hereby withdrawn.

The application is now complete.

No petition fee is owed. The $130 petition fee has been credited to Deposit Account No. 01-1944 as authorized in the May 16, 2003 application transmittal.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 16, 2003, using the papers filed on that date, and for indicating in the USPTO record that 5 sheets of drawings were present on filing. Thereafter, the file will be forwarded to Technology Center 2800 for examination in due course.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER, 8th Floor
SAN FRANCISCO, CA 94111-3834

In re Application of
Chrysafis, Christos
Application No. 10/439,936
Filed: May 16, 2003
For: **MULTIPLE CHANNEL MODE DECISIONS AND ENCODING**

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the Request for Withdrawal as attorney or agent and change of address filed on April 04, 2005.

A grantable request to withdraw, as attorney/agent of record must:
(1) Indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) Be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) Be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) Indicate the address to which future correspondence should be mailed.

A Revocation and Power of Attorney was filed April 13, 2005. Accordingly, the request is DISMISSED.

All attorneys/agents listed with Customer Number (20350) in the request 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.

Ken A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

CC:

FARJAMI & FARJAMI LLP
26522 LA ALAMEDA AVENUE, SUITE 360
MISSION VIEJO CA 92691

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/31/05

TO SPE OF : ART UNIT **3746**

SUBJECT : Request for Certificate of Correction on Patent No.: 10/439945 6945759

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [x] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments:

_____

_____

_____

_____

EHUD GARTENBERG
SUPERVISORY PATENT EXAMINER

Ehud Gartenberg — **SPE**

3746 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

EXXONMOBIL RESEARCH AND ENGINEERING COMPANY
P. O. BOX 900
ANNANDALE NJ 08801-0900

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APR 3 0 2004
OFFICE OF PETITIONS

In re Application of
Gregory P. Muldowney et al.
Application No. 10/439,960
Filed: May 16, 2003
Attorney Docket Number: P2003J047

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on March 25, 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 reply was filed August14, 2003 but it was non-responsive to the Notice mailed July 24, 2003 and a Notice of Incomplete Reply was mailed October 7, 2003. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. This petition and petitions decision precedes the mailing of a Notice of Abandonment.

Receipt of the substitute drawings submitted to comply with 37 CFR 1.84 and 37 CFR 1.121 is acknowledged.

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[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©)).

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LEGAL DEPARTMENT (M-495)
P.O. BOX 1926
SPARTANBURG SC 29304

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OFFICE OF PETITIONS

In re Patent No. RE39002	:	
Issue Date: 03/07/2006	:	
Application Number: 10/439961	:	
Filing Date: 05/16/2003	:	
Reissue of Patent No. 6086095	:	
Issue Date: 07/11/2000	:	DECISION ON PETITION
Application Number: 09/365374	:	
Filing Date: 07/30/1999	:	
Attorney Docket Number: 2087REI	:	
	:	

This is a decision on the petition under 37 CFR 1.378(c),[1] filed on September 8, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The original patent upon which the instant reissue patent is based issued on July 11, 2000.[2] The first maintenance fee was timely paid. The second maintenance fee could have been paid during the period from July 11, 2007 through January 13, 2008, or, with a surcharge, during the period from January 14 through July 11, 2008. The patent expired at midnight on July 11, 2008, for failure to timely pay the second maintenance fee.

---

[1] 37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:

(1) The required maintenance fee set forth in § 1.20(e) through (g);
(2) The surcharge set forth in § 1.20(I)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

[2] The periods for payment of maintenance fees in a reissue patent are counted from the date of grant of the original non-reissue application on which the reissued patent is based. See 37 CFR 1.362(h).

Therefore, since this petition was filed within twenty-four (24) months of the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

It is noted that the first maintenance fee was charged at the time the subject petition was filed. As it is the second maintenance fee payment, rather than the first, which is actually due, petitioners' deposit account will be charged the balance due between the first and second maintenance fee payment, as authorized in the subject petition.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 4

Bradley D. Blanche
Paul, Hastings, Janofsky & Walker LLP
12390 El Camino Real
San Diego, CA 92130-2081

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OCT 31 2003

OFFICE OF PETITIONS

In re Application of	:	
Rawsthorne et al.	:	
Application No. 10/439,966	:	ON PETITION
Deposited: May 16, 2003	:	
Attorney Docket No.:45256.00024	:	
Title of Invention: BLOCK TRANSLATION OPTIMIZATIONS FOR PROGRAM CODE CONVERSATION	:	

This is a decision on the petition to accord filing date filed September 5, 2003 (certificate of mailing September 5, 2003) requesting that the above-identified application be accorded a filing date of May 16, 2003.

Any request for reconsideration must be submitted within **TWO** (2) **MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.53." This is **not** final agency action within the meaning of 5 U.S.C. §704.

Application papers in the above-identified application were deposited on May 16, 2003. However, on July 3, 2003, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application", notifying applicants that the application papers had not been accorded a filing date because the application was deposited without drawings.[1]

In response, 8 sheets of drawings, including figures 1-8 and the present petition were filed on September 5, 2003. The petition contends that the application as filed included 8 sheets of drawings and were described in the original filed specification. In support, the petition is accompanied by a copy of applicant's postcard which indicates 8 sheets of drawings with 8 figures were submitted. Petitioner has also submitted a copy of the patent application transmittal form.

The evidence has been considered but it is not persuasive. A review of the official file confirms the 8 sheets of drawings were not amongst the items submitted on May 16, 2003.

The Office has a well established and well publicized practice of

[1] See 35 U.S.C. 111(a)(4)

providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

Although petitioner has provided a copy of a postcard receipt, the postcard will not serve as prima facie[2] evidence that 8 sheets of drawings were received on May 16, 2003 because the postcard does not have the Office stamp which would acknowledge receipt of the contents on the postcard including the 8 sheets of drawings.

The "Notice" mailed July 3, 2003, was correct in advising applicant the 8 sheets of drawings with 8 figures had been omitted. Therefore, the "Notice" was properly mailed.

It is noted the petition does not request in the alternative the later filing date of September 5, 2003 (the date of receipt of the 8 sheets of drawings). Accordingly, no filing date will be accorded to this incomplete application.

Petitioner must contact the Office within **TWO MONTHS** from the mailing date in writing to indicate whether applicants desire the later filing date of September 5, 2003.

Otherwise petitioner may request a refund of the filing fee pursuant to 37 CFR 1.53(e)(3), less the $130.00 handling fee set forth in 37 CFR 1.21(n), from the Office of Finance. However, the $ 130.00 petition fee will be charged to deposit account no. 50-2613.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 308-6916 (until December 1, 2003)
(703) 872-9306

---

[2] 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 office of all items listed thereon. See MPEP 503.

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

By delivery service:
(FedEx, UPS, DHL, etc.)
U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 6

Bradley D. Blanche
Paul, Hastings, Janofsky & Walker LLP
12390 El Camino Real
San Diego CA 92130-2081

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JUN 2 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Rawsthorne et al.	:	
Application No. 10/439,966	:	ON PETITION
Deposited: May 16, 2003	:	
Attorney Docket No.:45256.00024	:	
Title of Invention: BLOCK	:	
TRANSLATION OPTIMIZATIONS FOR	:	
PROGRAM CODE CONVERSATION		

This is a decision on the renewed petition filed December 22, 2003, requesting that the above-identified non-provisional application be accorded a filing date of May 16, 2003 or in the alternative September 5, 2003.

Application papers in the above-identified application were deposited on May 16, 2003. However, on July 3, 2003, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application", notifying applicants that the application papers had not been accorded a filing date because the application was deposited without drawings.[1] A petition requesting the inclusion of 8 sheets of drawings as part of the original disclosure was dismissed on October 31, 2003.

Upon further review of the renewed petition and the application file it is evident the claims presented with the original disclosure included method claims. It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). See MPEP 601.01(f).

Since the application should have been accorded a filing date and a Notice of Omitted Parts should have been issued rather than a Notice of Incomplete Application, the application will be

[1] See 35 U.S.C. 111(a)(4)

accorded the requested filing date of May 16, 2003 without any drawings.

The petition is granted to the extent indicated above.

The petition fee will not be refunded because the Office was correct in sending the Notice of Incomplete Nonprovisional Application because it appeared applicant intended to file at least one drawing, pursuant to the specification which references a section titled "Brief Description of the Drawings".

The application is being forwarded to the Office of Initial Patent Examination to accord the application a filing date of **May 16, 2003**, without any drawings.

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

Christina T. Donnell

Christina T. Donnell
Senior Petition Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FARSHAD FARJAMI, ESQ
26522 LA ALAMEDA AVENUE
SUITE 360
MISSION VIEJO CA 92691

MAIL

JUL 0 5 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
YU,SIU-LEONG
Application No. 10/439,972
Filed: May 16, 2003
For: RATE CONTROL FOR CODING AUDIO FRAMES

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney/agent of record filed on April 04, 2005.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

A revocation and power attorney was accepted on April 27, 2005.

Accordingly, the request is **DISMISSED. Future correspondence will sent to the above address which has been provided by the withdrawing attorney(s).**

All future communications from the Office will continue to be directed to the address listed above until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-7288

cc: TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

2173

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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

COPY MAILED

JAN 30 2004

OFFICE OF PETITIONS

In re Application of
Galou & Lyou
Application No.: 10/439,999
Filed: August 12, 2003
Attorney Docket No.: 064731.0357
For: CROSS-CONNECT MANAGEMENT WITH DISPLAY SELECTABLE BY INPUTTING ENDPOINTS

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed May 16, 2003. The petition was only recently forwarded to the Office of Petitions. The Office sincerely apologizes for the delay in addressing the petition and regrets any inconvenience occasioned by the delay.

The petition is granted.

Petitioner has shown that the non-signing inventor, De-Syang Leo Lyou, cannot be located. Specifically, Agent Betty Formby provided an affidavit which states that a package mailed to Mr. Lyou's last known address was returned as undeliverable, that searches for a current phone number or e-mail address were fruitless, and that Mr. Lyou's former associates did not respond to requests regarding Mr. Lyou's whereabouts. While this affidavit was made in December 2000, it shows that a diligent search for Mr. Lyou was conducted. Mr. Lyou's trail is even colder three years later. 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 the Office of Initial Patent Examination for consideration of the request for a corrected filing receipt, filed September 29, 2003 (certificate of mailing date September 24, 2003).

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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DE SYANG LEO LYOU
3388 SURRY PLACE
FREMONT, CA 94536

COPY MAILED

JAN 30 2004

OFFICE OF PETITIONS

In re Application of
Galou & Lyou
Application No.: 10/439,999
Filed: August 12, 2003
Attorney Docket No.: 064731.0357
For: CROSS-CONNECT MANAGEMENT WITH DISPLAY SELECTABLE BY INPUTTING ENDPOINTS

LETTER

Dear Inventor Lyou:

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: BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

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AUG 05 2008

In re Application of	:	
Galou et al.	:	DECISION ON PETITION
Application No. 10/439,999	:	
Filed: May 16, 2003	:	
Attorney Docket No.064731.0357	:	

This is a decision on the "PETITION FOR THE GRANTING OF A FILING DATE UNDER 37 CFR 1.182," filed April 29, 2008, requesting that the above-referenced application be accorded a filing date of May 16, 2003.

On May 16, 2003, applicants deposited the application papers for the above-identified application.

On August 4, 2003, the Office of Initial Patent Examination(now the Office of Patent Application Processing) mailed applicants a Notice of Incomplete Nonprovisional Application, notifying applicants that the application papers had not been accorded a filing date because the application was deposited without a specification.

Applicants acknowledged that the complete specification was inadvertently omitted from the application as filed. Applicants stated that this application expressly claimed the benefit of and incorporated by reference prior nonprovisional application, No. 09/584,168, filed May 25, 2000.

In an application containing an explicit incorporation by reference statement in the specification (or in a transmittal letter if the transmittal letter was filed prior to September 21, 2004), a petition for the granting of a filing date may be made under 37 CFR 1.182. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material,

requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the continuation or divisional application unless a decision granting the petition states that the application is accorded a filing date and that the amendment will be entered. See MPEP 201.06(c).

A review of the application as filed reveals that the application transmittal sheet contained an explicit incorporation by reference of prior-filed Application No. 09/584,168. As applicants have filed a petition under 37 CFR 1.182, a $400.00 petition fee, an amendment, and the omitted specification, the application will be accorded the filing date of May 16, 2003, as requested. Thus, the petition under 37 CFR 1.182 is **GRANTED**.

This matter is being referred to the Office of Patent Application Processing to accord the application a filing date of May 16, 2003, using the application papers received in the Office on that date, and the specification submitted on April 29, 2008. The Office of Patent Application Processing will issue a corrected filing receipt.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Paper No. 4

Barry S. Newberger
5400 Renaissance Tower
1201 Elm Street
Dallas TX 75270

COPY MAILED
MAY 1 0 2004
OFFICE OF PETITIONS

In re Application of
Fussell
Application No. 10/440,003
Filed: May 19, 2003
Attorney Docket No. AUS920020547US1

For: METHOD AND APPARATUS FOR IDENTIFYING THE ROLE OF AN INSTITUTION IN A ELECTRONIC FINANCIAL TRANSACTION

: DECISION GRANTING
: PETITION

This is a decision on the petition under 37 CFR 1.10(e), filed September 5, 2003, requesting that the above-identified application be accorded a filing date of December 19, 2002. The petition and application file was only recently forwarded to the Office of Petitions. The Office apologizes for the delay in addressing the petition and regrets any inconvenience occasioned by the delay.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Petitioner requests a December 19, 2002 filing date for the above-identified application on the basis that the application was deposited in Express Mail service on December 19, 2002, pursuant to the requirements of 37 CFR 1.10. However, the December 19, 2002 filing was never received and processed by the Office. Petitioner resubmitted the December 19, 2002 filing on May 19, 2003. Accordingly, the Office processed the application with a May 19, 2003 filing date. The instant petition was filed on September 5, 2003 in an attempt to secure a December 19, 2002 filing date for the application papers.

The petition is accompanied by, *inter alia*, a complete copy of petitioner's application, including a patent application transmittal form, an assignment cover sheet, an assignment, a declaration, an IDS, 23 pages of specification, and 6 sheets of drawings. Petitioner submitted a copy of Express

Mail label EU781298422US showing a date-in of December 19, 2002 and a USPS date stamp of DEC 9 2002 affixed thereto. The same Express Mail label number is found on the original application papers. The petition, signed by Barry Newberger, an attorney/agent of record, states that the original application was filed as Express Mail with the USPS on December 19, 2002 and states that the papers filed with the instant petition are a true copy of the originally-deposited papers.

Paragraph (e) of 37 CFR 1.10 states that:

> Any person mailing correspondence addressed as set out in 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, may petition the Commissioner to consider such correspondence as filed in the Office on the USPS deposit date, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
>
> (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
>
> (4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

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. That is the date that 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 December 19, 2002.

Accordingly, the petition is granted. No fee has been or will be filed in connection with this petition.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of **December 19, 2002** and the mailing of a corrected filing receipt.

Thereafter, the application will be forwarded to Technology Center 2600 for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: BARRY NEWBERGER
P.O. BOX 50784
1201 MAIN STREET
DALLAS, TX 75250-0784

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FEB 06 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103

Paper No. 3

In re application of :
Jeffery Brady et al. :
Application No. 10/440,010 :
Filed: May 16, 2003 :
For: SYSTEM AND METHOD FOR A PLANNER AND AN ACCOUNTING USER INTERFACE FOR A PLANNER :

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed August 14, 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(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 August 14, 2003 lacks requirement 2(C), above. In view of this deficiency, the petition is **DISMISSED**.

The applicant, assignee or attorney in addition to stating that a careful search of the prior art has been made, or having good knowledge of the prior art, **must** submit the **most closely** related pieces of prior art. Since "most closely related" is the **best** of the art found, a submission of art is always required, even if the applicant feels that it is not all that related to the invention.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above.

Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

SUMMARY: Petition to Make Special **DISMISSED**.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/mjz: 2/2/04

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

APR 15 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103

In re application of :
Jeffery Brady et al. :
Application No. 10/440,010 :
Filed: May 16, 2003 :
For: SYSTEM AND METHOD FOR A PLANNER AND AN ACCOUNTING USER INTERFACE FOR A PLANNER :

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the renewed petition under 37 C.F.R § 1.102(d) filed February 27, 2004 to make the above-identified application special. The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(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 renewed petition filed February 27, 2004 meets all of the requirements above and, therefore, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications; (2) to promptly examine this application out of turn; and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference and appeal, if any, only if petitioner makes a prompt *bona fide* effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/mjz: 3/19/04

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/440,018	05/16/2003	Zhijian Deng	3165F-000117	6952

27572 7590 05/06/2004

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER
NINO, ADOLFO

ART UNIT	PAPER NUMBER
2831	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/449018			

EXAMINER

ART UNIT	PAPER NUMBER

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.

☐ A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

☐ A proposed reply was received on _____ , but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

☐ A reply was received on _____ , but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).

☐ No reply has been received.

☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).

☐ The submitted fee of $_____ is insufficient. A balance of $_____ is due.
The issue fee by 37 CFR 1.18 is $_____ . The publication fee, if required, by 37 CFR 1.18(d) is $_____ .

☒ The issue fee and publication fee, if applicable, have not been received.

☐ Applicant's failure to timely file corrrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

☐ No corrected drawings have been received.

☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☐ The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

LeD

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TOWNSEND AND TOWNSEND AND DREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

MAIL

DEC 23 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re application of:
Michael Gazier
Application No. 10/440028
Filed: May 15, 2003
For: HIGHER LAYER BONDING OF MULTIPLE ACCESS LINES FOR CARRIER GRADE ACCESS

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address filed on September 27, 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 satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED.**

All of the attorneys/agents associated with Customer Number 20350 have been withdrawn.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

cc: Kris V. Kalidindi, Esq.
Potomac Patent Group, PLLC
2010 Corporate Ridge, Suite 700
McLean, VA 22102

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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GRAYBEAL JACKSON HALEY LLP
Suite 350
155-108th Avenue N.E.
Bellevue, WA 98004-5973

Mail Date: 04/21/2010

Applicant	: Michael T. Hertz	: DECISION ON REQUEST FOR
Patent Number	: 7584156	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/440,032	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/15/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1220** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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DALLAS, TX 75380

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MAY 11 2005

OFFICE OF PETITIONS

In re Application of	:	
Joseph Wert	:	DECISION ON APPLICATION
Application No. 10/440,033	:	FOR
Filed: May 16, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. P05576	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. § 1.705(b)," filed November 22, 2004. Applicant requests that the initial determination of patent term adjustment be corrected from thirteen (13) to thirty-eight (38) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is thirty-eight **(38)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 23, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 13 days. On November 22, 2004, applicant timely[1] submitted an application for patent term adjustment (with required fee). Applicant disputes the

[1] PALM records show that the Issue Fee payment was received in the Office on November 23, 2004.

reduction of 25 days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed July 24, 2003. Applicant states that they timely responded to the Notice on September 26, 2003. In support thereof, applicant submits a copy of their date-stamped and itemized return postcard.

The record supports a conclusion that the application is not subject to a terminal disclaimer.

A review of the application file confirms that applicant's response to the Notice to File Missing Parts of Application mailed July 24, 2003, is of record in the application with a date of receipt by the Office of September 26, 2003. Moreover, the response is complete and proper. As this response was filed within the three-month period under 37 C.F.R. § 1.704(b), there was no applicant delay.

Accordingly, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is thirty-eight (38) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. 1.18(e). No additional fees are required.

The application file is being forwarded to the Publishing Division for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of REVISED PAIR Screen

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

BANNER & WITCOFF LTD
ATTORNEY FOR MICROSOFT
1001 G STREET, NW
ELEVENTH FLOOR
WASHINGTON DC 20001-4597

In re Application of	:	
Shaun A. Kaasten et al	:	
Application No. 10/440,035	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. MSFT120790	:	

This is a decision on the petition, filed June 5, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 30, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2162 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Karen Creasy
Petitions Examiner
Office of Petitions

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new 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).

Paper 3

Filed by: Gary V. Harkcom
Acting Chief Administrative Patent Judge
Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-9797
Fax: 571-273-0043

Filed:
November 9, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

STEPHEN D. KUSLICH, JAMES W. AHERN,
LEON J. GROBLER and STEVEN J. WOLFE
Junior Party
(Application 10/440,036),

MAILED
NOV - 9 2004
PAT & TM OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

v.

STEPHEN HOCHSCHULER, WESLEY JOHNSON,
KEVIN L. NICKELS, THOMAS R. HEKTNER
LARRY WALES and TYLER LIPSCHULTZ
Senior Party
(Patent 6,740,093).

Patent Interference No. 105,252

DECISION ON PETITION

A. Background

On August 30, 2004, Kuslich (hereinafter "applicant") filed a "Petition" seeking an expedited waiver of Rule 14 (37 CFR § 1.14 (2003)) with respect to certain papers submitted on July 13, 2004. The papers relate to former Rule 608(b) (37 CFR § 1.608(b) (2003)) declarations submitted in the Kuslich application involved in the interference.

The papers were filed for the purpose of presenting a prima facie case of priority in connection with applicant's attempt to provoke an interference with the patent involved in the interference.

Applicant states:

> Due to the continuing potential for prejudice to the [a]pplicant's position in the interference by virtue of Image File Wrapper (IFW) versions of these papers being available on the USPTO web site, [a]pplicant requests that access to these papers be immediately withdrawn from the USPTO web site while this Petition is being considered.

B. Findings

The following findings are supported by a preponderance of the evidence. Many are taken, with editorial changes, from the Petition.

1. Applicant copied claims of an unexpired U.S. Patent seeking to provoke an interference.

2. For one of the "copied" claims, applicant believes that it is the junior party by more than three months.

3. For other "copied" claims, applicant believes it is the senior party.

4. Accordingly, applicant proposed three counts.

5. Applicant submitted two separate "Showings," one for proposed Count 1, where applicant believes it would be junior party, and another for proposed Counts 2 and 3, where applicant believes it would be senior party.

6. With respect to proposed Counts 2 and 3, applicant also says it will allege derivation.

7. Applicant requested that the Showing be kept separate from *** [a] Request for Interference *** and that *** [the] Showing not be made available to the parties for the

'093 Patent until after an Interference has been declared and [p]reliminary [s]tatements have been filed.

8. According to applicant, the request was made in connection with what applicant says was the intent behind former Rule 627 (37 CFR § 1.627 (2003)).

9. Pursuant to former Rule 627, applicant says that preliminary statements are filed under seal and are not opened until directed by the board.

10. Each showing is said to reveal important information as to dates of conception and actual reduction to practice by applicant.

11. Also said to be revealed are declarations and documents supporting applicant's allegation of derivation.

12. Applicant goes on to say that the Showing reveals information which would normally be included in a preliminary statement which would otherwise be protected from disclosure to the other party by virtue of former Rule 627.

13. As of the date of the submission of the Showings (July 13, 2004), applicant tells us that the USPTO web site was not online with its current version of IFW documents.

14. Applicant's attorney says, therefore, that he reasonably believed that the request made in connection with the Showings would suffice to protect the "confidentiality" of the Showings until and appropriate time in any interference which might be declared.

15. Sometime after the Showings were filed, applicant's attorney says that he was checking the USPTO web site for the status of the application involved in the interference.

16. Applicant's attorney then discovered that IFW documents of all the papers submitted on July 13, 2004, including the showings, were available to the public through the USPTO web site.

17. IFW was added to USPTO's Public PAIR on July 30, 2004; thus, on that date, applicant's Showings probably became available to the public.

18. Applicant's attorney says he then contacted a Technology Center Interference Practice Specialist.

19. According to applicant's attorney, the Interference Practice Specialist advised the attorney that the Showing would remain on the USPTO web site.

20. Further according to applicant's attorney, the Interference Practice Specialist is said to have explained that Rule 14 (37 CFR § 1.14 (2003)) controlled all aspects of the public availability of a published patent application.

21. The Interference Practice Specialist was also said to have stated that Rule 14 did not make an exception for a showing under former Rule 608(b).

22. Applicant correctly concedes that the proof demanded by former Rule 608(b) must establish a prima facie case of priority vis-a-vis the senior party patentee; otherwise, when an interference is declared, the applicant will be placed under an order to show cause why "summary judgment" should not be entered.

23. For further discussion related to the requirements and practice under former Rule 608(b), see (1) Kistler v. Weber, 412 F.2d 280, 283-285, 162 USPQ 214, 217-219 (CCPA 1969), (2) Hahn v. Wong, 892 F.2d 1028, 13 USPQ 1313 (Fed. Cir. 1989) and (3) Basmadjian v. Landry, 54 USPQ2d 1617 (Bd. Pat. App. & Int. 1997).

24. Applicant suggests that it is not feasible for an applicant to comply with the spirit and letter of former Rule 608(b) and not include substantial portions of the information that will appear in a preliminary statement filed under former Rules 621 through 631 (37 CFR §§ 1.621 through 1.631 (2003)).

25. Applicant reasons that given the "importance of confidentiality" to the entire process for filing and revealing

information contained in preliminary statements and its impact on interference proceedings, that applicant is entitled to a waiver of Rule 14.

26. With commendable candor, applicant's attorney acknowledges being aware of Comment 107 in the Notice of Final Rule, 69 Fed. Reg. 49960, 49985 (Aug. 12, 2004).

27. Comment 107 was as follows:

> Comment 107: Section 41.109(a) does not retain the practice of [former] § 1.612(a) (2003) of withholding access to § 1.131 and [former] § 1.608 (2003) (now § 41.202(d)) declarations in involved applications. Three comments request that the practice be restored. Two of the comments suggest that the practice be restored for all unpublished applications, or equivalently that pre-29 November 2000 applications be grandfathered out of the rule. One comment suggests that the practice be restored for § 41.202(d) showings because, unlike § 1.131 declarations, they relate directly to the junior party's priority case without otherwise reflecting on patentability and thus, according to the comment, only serve to expose the junior party's priority case.
>
> Answer: Part of the original intent of the rule change was to balance the playing field between applicants and patentees since any § 1.131 or § 1.608 (2003) declaration in a patent would be publicly available. In many cases, the junior party is a patentee so no showing will have been filed or it will already be publicly available. Moreover, while the declarations were removed under § 1.612(a) (2003), other papers that

discussed the declarations were not, so the protection offered under the rule was not very extensive.

The difference suggested in one comment between declarations under § 1.131 and § 1.608 (2003) is not so great since in both cases the Office will have relied on the declaration to reach the conclusion that all patentability issues in the application other than priority have been resolved. The showing under § 41.202(d) does not require the applicant to put on its entire priority case. It only need put on enough of a case to show priority assuming the opposing party puts on no case at all. Often this will be much less than the applicant could or ultimately will prove. For instance, if the applicant has a filing date of August 15, while the patentee's application was filed on August 7 with an inventor's declaration dated August 5, then a proof of conception before August 5 and diligence from at least August 4 will generally suffice.

In any case, starting later this year, these papers will be available over the internet in published applications with an image file wrapper. Soon it will not make sense to try to withhold a § 1.131 declaration or a § 41.202(d) showing in most cases because it will have already been publicly available.

There may be some instances when the paper has not been made public and an applicant could show undue prejudice if the paper were made available to its opponent.

> Such cases are best left to case-by-case development. An applicant may promptly move (§ 41.121(a)(3)) as soon as the interference is declared to have its § 41.202 showing withheld. If the Board grants a motion to withhold a § 41.202(d) showing, it will advise the Office of Public Records, which may then remove the showing from the file after it has been printed.

28. Applicant notes that the Showings were submitted prior to the publication of Comment 107 in the Federal Register.

29. Accordingly, applicant's attorney says he could not have been aware of the "guidance" provided by Comment 107.

30. However, applicant's attorney advises that even if he could have been aware of the "guidance" that in

> cases, like the instant case, for which a case-by-case development is suggested in the Comment will be insufficient to protect the confidentiality of *** [information that will appear in preliminary statements] under the new [2004] Rules.

31. Applicant suggests that it has been caught in a transition between (1) the "current" rules and the new 2004 rules and (2) an old system without IFW images and new system with online IFW images.

32. Finally applicant reasons that if relief cannot be provided that it would be "the equivalent of closing the barn door once the cows are already out."

C. Discussion

Former Rule 612(a) (37 CFR § 1.612 (a) (2003)) provided that certain material would be removed from paper application files upon declaration of an interference. Included in that material were Rule 131 affidavits and former Rule 608(b) showings and explanations associated with those showings.

In a Notice of Proposed Rulemaking, 68 Fed. Reg. 66648, 66659 (Nov. 26, 2003), the Director advised that he was proposing to change the practice set out in former Rule 612(a). See proposed Rule 41.109; 68 Fed. Reg. at 66684. The Director explained, 68 Fed. Reg. at 66659:

> The proposed rule would depart from Rule 612 by eliminating the requirement for withholding declarations under Rule 131 and statements under Rule 608. One reason for withholding such papers is that they give the opponent an advanced view of the applicant's priority case, which is said to be unfair (and can enable fraud by the other party in stating its priority case). This practice, however, is asymmetric because the withholding applies to applicants while a patentee's Rule 131 declaration is publicly available. Moreover, to the extent the applicant has relied on the declaration to obtain allowable claims, it is an important element in the prosecution history. On balance, the goals of examination are better served by permitting early access to such statements. Nothing in the proposed rule would prevent the Board from authorizing the withholding of such declarations on a showing of good cause.

Comment 107 reflects the agency's analysis of all relevant factors, including input received as a result of the Notice of Proposed Rulemaking. In addition to adhering to the rationale in the Notice of Proposed Rulemaking, when ultimately promulgating Rule 41.109, the Director explicitly considered the possibility that showings under Rule 131 and new Rule 41.202(d) would be available to the public in the form of an image file wrapper.

The scenario mentioned by the Director in the Notice of Final Rule is precisely what occurred in this case.

It reasonably can be said that applicant's views on availability of showings conflicts with the policy position taken by the Director after notice and comment. Applicant's point about "confidentiality" and adverse consequences said to flow by making prematurely showings available were considered by the Director and rejected.

In this case, the Showings were placed in front of the public by virtue of IFW, albeit prior to adoption of new Rule 41.190(a). Whether any member of the public saw the Showings may or may not be known. To the extent an individual saw the Showings, the agency is in no position to tell that individual to forget what it saw.

It is true that Comment 107 states that consideration might be given on a case-by-case basis for precluding the public from seeing a new Rule 41.202(a) showing. However, applicant has not shown that this case is one of those cases where relief should be granted. The case-by-case observation in Comment 107 basically states a truism that there may be some circumstances where the old policy should apply. However, the Showings were made available to the public through IFW and Public PAIR, and as explained above, it is impractical to take away from the public material which has been made available to the public and which may have been seen by the public.

A review of the Petition does not reveal that applicant would have done anything different had the rule been in place when the Showings were filed.

Lastly, applicant has not shown any prejudice resulting from application of the new rule which is beyond what applicant regards as the inherent prejudice of the rule itself. Since the Director has determined that the rule should apply generally and because the Showings were made available to the public, relief in this case is not appropriate.

D. Order

Upon consideration of the Petition, and for the reasons given, it is

ORDERED that the Petition is denied.

FURTHER ORDERED that a copy of this Decision on Petition shall be made of record in the file of involved patent application 10/440,036.

Gary V. Harkcom

GARY V. HARKCOM
Acting Chief Administrative Patent Judge

9 November 2004
Alexandria, VA

cc (via overnight delivery)

Attorney for Kuslich:

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
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Paper No. 4

Judson K. Champlin
Westman, Champlin & Kelly, P.A.
International Centre
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Minneapolis, MN 55402-3319

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OFFICE OF PETITIONS

In re Application of :
Werner Muller :
Application No. 10/440,059 :
Filed: May 16, 2003 :
Attorney Docket No. M15.12-0002 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.10, filed August 21, 2003, requesting that the above-identified application be accorded a filing date of May 16, 2003, rather than the presently accorded filing date of May 17, 2003.

Petitioner alleges that the application was deposited in Express Mail service on May 16, 2003. In support of the allegation, the petition is accompanied by the declaration of BJ Morain, a USPS employee, which states: "The package addressed to the Commissioner for Patents and submitted under Express Mail No. EV178016200US was deposited with the United States Postal Service on May 16, 2003 as indicated on the stamp, and not on May 17, 2003 as indicated in the "date-in" block." The same Express Mail label number was placed on the original application papers located in the official file.

A disinterested USPS employee has verified the date of deposit pursuant to 37 CFR 1.10(d) and MPEP 513. Accordingly, the Office considers the above-identified application as having been filed on May 16, 2003, the date of deposit. The petition is **granted**. No petition fee is necessary.

This application file will be forwarded to the Office of Initial Patent Examination for correction of the filing date May 16, 2003, and to await a response to the outstanding Notice to File Missing Parts of Nonprovisional Application.

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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GOODWIN PROCTER LLP
ATTN: PATENT ADMINISTRATOR
620 Eighth Avenue
NEW YORK, NY 10018

Mail Date: 04/20/2010

Applicant	: Gregory A. Allen	: DECISION ON REQUEST FOR
Patent Number	: 7625618	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/440,061	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/15/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1068** 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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MINNEAPOLIS MN 55440-1022

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APR 09 2008

OFFICE OF PETITIONS

In re Patent No. 7,252,967	:	
Yuichi Hirata	:	
Issue Date: August 7, 2007	:	DECISION ON
Application No. 10/440,066	:	PATENT TERM ADJUSTMENT
Filed: May 15, 2003	:	
Attorney Docket No. 14875-067002	:	

This is a decision on the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. §1.705(d)", filed October 3, 2007. Patentees request that the patent term adjustment indicated on the patent be corrected from five hundred twenty-six (526) days to six hundred sixteen (616) days.

The application for patent term adjustment is **DISMISSED**. Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On August 7, 2007, the above-identified application matured into U.S. Patent No. 7,252,967. The instant request for reconsideration filed October 3, 2007 was timely filed within two months of the date the patent issued. See §1.705(d). The Patent issued with a Patent Term Adjustment of five hundred twenty-six (526)). Patentees state that they should not have been assessed applicant delay of ninety (90) days for the submission of a priority document after the Notice of Allowance.

The adjustment of ninety (90) days for the submission of the certified copy of the priority document after the Notice of Allowance has been determined to be correct. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). A certified copy of a priority document is listed as an example of a paper that is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application.

In this instance, applicants were advised in the Office action mailed April 10, 2006, that although the Office noted the claim for priority to Japanese application 10/121805, the claim had not been perfected because no English translation of the priority document has been submitted. Applicants filed a reply to the Office action on September 11, 2006, but did not include a copy of the priority document. The Office then mailed a Notice of Allowance and Allowability on November 27, 2006. A Supplemental Notice of Allowability was mailed on January 29, 2007. Both Notices stated that while the priority claim was acknowledged, none of the certified copies of the priority documents have been received.

Applicants could have filed the priority document after being so advised in the April 10, 2006 Office action. Instead, Applicant chose to wait until after the mailing of the Notice of Allowance. Whether or not the priority document was filed in the parent application is irrelevant. 37 C.F.R. 1.4(b) states that "Since each file must be complete in itself, a separate copy of every paper to be filed in a patent, patent file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical." Accordingly, the assessment of delay in this instance under 37 C.F.R. §1.704(c)(10) was proper.

In view thereof, the correct determination of PTA at the time of issuance is 526 days (679 days of PTO delay, reduced by 153 (120+33) days of applicant delay).

The $200 fee set forth in 37 C.F.R. §1.18(e) has been charged to

Deposit Account No. 06-1050, as authorized, not withstanding applicant's request that no fee be charged.[1]

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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[1] See Comment 1 in Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14, 65 Fed. Reg. 54366 (Oct. 3 2000) (stating that the fee set forth in 37 C.F.R. 1.18(e) is charged to allow the Office to recover the estimated average cost of treating applications for patent term adjustment, and is not refundable even in the event of Office error).

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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
10/440,081	05/17/2003	2622	1074	50037.193US01	4	38	3

CONFIRMATION NO. 7430

CORRECTED FILING RECEIPT

OC000000011090418

27488
MERCHANT & GOULD
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

Date Mailed: 10/23/2003

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)

Samuel W. Bent, Bellevue, WA;
Namita Gupta, Kirkland, WA;
David J. Jenni, Sammamish, WA;
Alexander I. Hopmann, Seattle, WA;

Assignment For Published Patent Application

Microsoft Corporation, Redmond, WA;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/03/2003

Projected Publication Date: 11/18/2004

Non-Publication Request: No

Early Publication Request: No

Title

System and method for controlling user interface properties with data

Preliminary Class
358

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

Paper No.: _____

DATE : 7-25-08

TO SPE OF ART UNIT 2818

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/440099 Patent No.: 7109092

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 Review Claims

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

E Yarb

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: _____

Stan Lohe

SPE

2818

Art Unit

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OCT 19 2005

BROUILLETTE & PARTNERS
METCALFE TOWER, 1550 METCALFE STREET
SUITE 800
MONTREAL QC H3A-1X6 CA CANADA

In re Application of
Andre Deland et al.
Application No. 10/440,155
Filed: May 19, 2003
For: ANGLED TRACTION LUGS FOR ENDLESS BAND

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 September 26, 2005.

The petition is **GRANTED** in view of the following evidence of timely filing :

☒ Copy of the first page of the response date stamped by the OIPE on April 04, 2005.

☐ 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, restore the application to pending status, and enter the copy of the April 04, 2005 response before being returned to the examiner for an expeditious Action.

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

KJD/rjc/10/7/05

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MAR 04 2005
TECHNOLOGY CENTER 3600

Birch Stewart Kolasch & Birch
P.O. Box 747
Falls Church, VA 22040-0747

In re Application of
Mei-Yin Yu
Application No. 10/440,170
Filed: May 19, 2003
For: JOINT

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office on September 8, 2004.

The petition is **GRANTED**.

A review of the file record reveals that an Office action was mailed on February 23, 2004, with a three-month shortened statutory period for response. The application was held abandoned for failure to timely respond to the Office action mailed on February 23, 2004, and a Notice of Abandonment was mailed on September 2, 2004.

Applicants contend that the February 23, 2004 Office Action was never received.

A review of the application file reveals that the Office Action mailed February 23, 2004, while properly addressed, was returned to the USPTO on February 26, 2004, as "undelivered".

Since the Office action was properly addressed, and was not delivered, applicant's petition to withdraw the holding of abandonment is **GRANTED**.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the holding of abandonment, and restore the application to pending status before re-dating and re-mailing the Office action (non-final rejection) previously mailed on February 23, 2004.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/rwg: 1/26/05

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DENNISON, SCHULTZ, DOUGHERTY &
MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

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MAR 22 2006

OFFICE OF PETITIONS

In re Application of :
Jacques Baudonnel :
Application No. 10/440,175 :
Filed: May 19, 2003 :
Attorney Docket No. 03082 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed January 9, 2006 to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed June 16, 2005. An amendment filed October 11, 2005 with a one month extension of time did not place the application in condition for allowance and an Advisory Action was mailed December 22, 2005. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner has submitted a Request for Continued Examination (RCE) and requests that the amendment filed October 11, 2005 be considered as the submission required under 37 CFR 1.114.

All other requirements under 37 CFR 1.137(b) having been met, this application is being forwarded to Technology Center 1771 for processing of the RCE.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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Paper No. 5

OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA, VA 22320

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AUG 08 2003

OFFICE OF PETITIONS

In re Application of :
Alan D. Raisanen et al :
Application No. 10/440,177 : DECISION GRANTING STATUS
Filed: May 19, 2003 : UNDER 37 CFR 1.47(A)
For: INTEGRATED SIDE SHOOTER INKJET :
ARCHITECTURE WITH ROUND NOZZLES :

This is in response to the petition under 37 CFR 1.47(a), filed May 19, 2003 and supplemented by facsimile transmission on August 6, 2003.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to Petitions Examiner Wan Laymon at (703) 306-5685.

This application is being forwarded to Technology Center AU 2853 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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ALAN D. RAISANEN
5103 PILGRIMPORT ROAD
SODUS, NY 14551

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AUG 0 8 2003

OFFICE OF PETITIONS

In re Application of
Raisanen and Nelson
Application No. 10/440,177
Filed: May 19, 2003
For: INTEGRATED SIDE SHOOTER INKJET ARCHITECTURE WITH ROUND NOZZLES

Dear Mr. Raisanen:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
OLIFF & BEFFIDGE
P.O. BOX 19928
ALEXANDRIA, VA 22320

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

Mail Date: 05/28/2010

Applicant	: Michel Van Ackere	: DECISION ON REQUEST FOR
Patent Number	: 7624429	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/440,239	: 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 **1205** 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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BEYER WEAVER & THOMAS, LLP
P.O. BOX 70250
OAKLAND, CA 94612-0250

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OFFICE OF PETITIONS

In re Application of	:	
Stefan Roever, et. al.	:	
Application No. 10/440,286	:	DECISION ON PETITION
Filed: May 15, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. NAV1P004X3	:	

This is a decision on the petition, filed June 27, 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).

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 15, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date will be mailed, in due course.

The Power of Attorney filed January 25, 2005 has been accepted and made of record.

This application is being referred to Technology Center Art Unit 2164, to await a response to the non-final Office action mailed October 31, 2005.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE STREET
EXCHANGE PLACE
BOSTON MA 02109-2881

In re Application of	:	
Stein, et al.	:	
Application No. 10/440,330	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. ANA-041	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed March 12, 2010, to accept the unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority of the prior-filed provisional applications set forth in the amendment filed concurrently with the instant petition.

The petition under 37 CFR 1.78(a)(6) is also **DISMISSED**.

The petition under 37 CFR 1.78(a)(6) must be accompanied by:

1. the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) of the prior filed application, unless previously submitted.

2. the surcharge set forth in § 1.17(t)

3. a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition under 37 CFR 1.78(a)(6) lacks item (1) above.

As to item (1), it is noted that the reference required by 35 U.S.C. § 119 and 37 CFR § 1.78(a)(5)(i) claims direct priority to several prior-filed provisional applications that were filed more than twelve months before the subject non-provisional application. In order to claim priority directly to the provisional application, the subject application must have been filed within twelve months of the filing date of the provisional applications. The subject application was not filed within twelve months of several of the provisional applications to which direct priority is claimed. Accordingly, in order to claim priority to the provisional applications, applicant must establish a chain of priority through intermediate applications. Section 201.11 of the Manual of Patent Examining Procedure (MPEP) provides, in pertinent part, that:

> A nonprovisional application that directly claims the benefit of a provisional application under 35 U.S.C. 119(e) must be filed within 12 months from the filing date of the provisional application. Although an application that itself directly claims the benefit of a provisional application is not required to specify the relationship to the provisional application, if the instant nonprovisional application is not filed within the 12

> month period, but claims the benefit of an intermediate nonprovisional application under 35 U.S.C. 120 that was filed within 12 months from the filing date of the provisional application and claimed the benefit of the provisional application, the intermediate application must be clearly identified as claiming the benefit of the provisional application so that the Office can determine whether the intermediate nonprovisional application was filed within 12 months of the provisional application and thus, whether the claim is proper. Applicant must state, for example, "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 ---." A benefit claim that merely states "this application claims the benefit of nonprovisional Application Nos. C and B, and provisional Application No. A" would be improper.
>
> Where the benefit of more than one provisional application is being claimed, the intermediate nonprovisional application(s) claiming the benefit of each provisional application must be indicated. Applicant must state, for example, "this application is continuation of Application No. D, filed ---, which is a continuation-in-part of Application No. C, filed ---, Application No. D claims the benefit of provisional Application No. B, filed ---, and Application No. C claims the benefit of provisional Application No. A, filed ---." If a benefit claim to a provisional application is submitted without an indication that an intermediate application directly claims the benefit of the provisional application and the instant nonprovisional application is not filed within the 12 month period or the relationship between each nonprovisional application is not indicated, the Office will not recognize such benefit claim and will not include the benefit claim on the filing receipt. Therefore, a petition under 37 CFR 1.78(a) and the surcharge set forth in 37 CFR 1.17(t) will be required if the intermediate application and the relationship of each nonprovisional application are not indicated within the period set forth in 37 CFR 1.78(a).

In accordance with Section 201.11 of the MPEP as cited above, the reference filed March 12, 2010, is improper as petitioner makes a direct claim from 10/440,330 to several provisional applications that were filed more than twelve months before non-provisional application 10/440,330.

Petitioner may wish to file a renewed petition under 37 CFR 1.78(a)(6) with a proper reference under 35 U.S.C. § 119 and 37 CFR § 1.78(a)(5)(i).

The reference to add the prior-filed applications on page one following the first sentence of the specification is not acceptable as drafted since it improperly incorporates by reference one of 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 USC § 119 and 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 USC § 119 and 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). The amendment submitted on renewed petition cannot incorporate by reference an application not incorporated by reference on filing of the application.

The issue fee in this case was paid on March 12, 2010. It is conceivable that the application will issue before either the filing or the granting of a renewed petition under 37 C.F.R. §1.78(a)(6). In such case, submission of a certificate of correction and fee of $100.00 will be required as a condition for granting the petition under 37 C.F.R. §1.78(a)(6).

Petitioner must submit the renewed petition under 37 CFR 1.78(a)(6), accompanied by a completed Certificate of Correction (with the $100.00 fee), which includes the benefit claim to the prior-filed provisional applications.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision may be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Chris Bottorff
Supervisor
Office of Petitions

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FOLEY & LARDNER LLP
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

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OFFICE OF PETITIONS

In re Application of	:	
GATEVA, et al.	:	
Application No. 10/440,302	:	DECISION ON PETITION TO
Filed: May 19, 2003	:	WITHDRAW FROM RECORD
Attorney Docket No. 061602-5125	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 11, 2008.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Glenn P. Albert, Jr. 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 as it 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: GATEVA RALITSA
5406 LAKE WASHINGTON BLVD.
KIRKLAND, NE 98033

cc: BRADLEY C. WRIGHT
BANNER & WITCOFF, LLP
1100 13TH STREET NW, SUITE 1200
WASHINGTON, DC 20005

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Robert E. Bushnell
Attorney-At-Law
1522 K Street, N.W. Suite 300
Washington, DC 20005-1202

In re Application of Richard G. Hyatt, Jr.
Appl. No.: 10/440,308
Filed: May 19, 2003
For: ELECTROMECHANICAL CYLINDER PLUG

DECISION ON PETITION REQUESTING ENTRY OF A SUPPLEMENTAL APPEAL BRIEF UNDER 37 CFR 1.181

This is a decision on applicant's petition filed December 14, 2005 under 37 CFR 1.181 requesting entry of the applicant's Supplemental Appeal Brief also filed December 14, 2005. There is no fee required for this petition.

The petition is **GRANTED.**

After review of the above file, the file history shows that a final office action was mailed to applicant on July 7, 2004. In response to the final rejection, the applicant filed an amendment and a Notice of Appeal on November 8, 2004. In response to the amendment filed on November 8, 2004, the examiner issued an advisory action stating that the applicant's arguments were not found persuasive, and the application was not in condition for allowance. In response to the advisory action, the applicant filed an Appeal Brief on March 11, 2005. After reviewing the Appeal Brief filed on March 11, 2005, the examiner concluded that it was a defective Appeal Brief that was not in compliance with 37 CFR 41.37(c)(1)(viii) (effective date of September 13, 2004) because the Brief did not present an argument under a separate heading for each ground of rejection on appeal. In response to the Notice of Defective Appeal Brief, the applicant then filed a second Appeal Brief on August 1, 2005. After reviewing this Appeal Brief, the Examiner once again concluded that it was not in compliance with the BPAI final rule because: 1) The brief did not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)); 2) The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR41.37(c)(1)(vii)); 3) The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR41.37(c)(1)(viii)); 4) The brief does not contain an Evidence appendix (37 CFR 41 .37(c)(1)(ix)); and 5) The brief does not contain a Related Appeals and

Interferences appendix (37 CFR 41.37(c)(1)(x)). Therefore, the Examiner sent a Notice of Defective Appeal Brief to the applicant on November 14, 2005 indicating that the Appeal Brief filed on August 1, 2005 was defective for all of the above reasons. The applicant then filed a Supplemental Appeal Brief on December 14, 2005 along with this petition.

Petitioner argues in the petition that the Supplemental Appeal Brief filed on December 14, 2005 is in compliance with 37 CFR 41.37 (c)(1) as it includes items (i) to (x) in the order set forth. The petitioner further argues that it is in compliance with the BPAI final rule because in the Supplemental Appeal Brief of December 14, 2005, the applicant stated that he has corrected items 1-5 above. As to compliance with 37 CFR (c)(1)(v), appellant's Summary of the Claimed Subject Matter in the Appeal Brief filed December 14, 2005 is deemed to be in general compliance with the rule, although not in strict compliance. Therefore, since the Supplemental Appeal Brief filed on December 14, 2005 has substantially corrected all of the deficiencies set forth in items 1-5 above that were indicated by the examiner in the Notice of Defective Appeal Brief of November 14, 2005 and in order to expedite prosecution, it will be accepted as in compliance with 37 CFR (c)(1)(v).

In conclusion, since it has been determined that the Supplemental Appeal Brief is in general compliance with 37 CFR 41.37, the file is being forwarded to the examiner to prepare the Examiner's Answer in response to the Supplemental Appeal Brief filed on December 14, 2005.

SUMMARY: The petition is **GRANTED.**

Donald T. Hajec
Director
Patent Technology Center 3600
571-272-5150

bg: 3/31/06

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DEC 14 2006

TECHNOLOGY CENTER 3600

Robert E. Bushnell
Attorney-At-Law
1522 K Street, N.W. Suite 300
Washington, DC 20005-1202

In re Application of Richard G. Hyatt, Jr.
Appl. No.: 10/440,308
Filed: May 19, 2003
For: ELECTROMECHANICAL CYLINDER PLUG

DECISION ON PETITION REQUESTING ENTRY OF A SUBSTITUTE REPLY BRIEF UNDER 37 CFR 1.181

This is a decision on the petition filed October 12, 2006 under 37 CFR 1.181 requesting entry of the substitute Reply Brief filed on July 5, 2006. There is no fee required for this petition.

The petition is **DENIED.**

After review of the above file, the file history shows that an Appeal Brief was filed on December 14, 2005. In response to the Appeal Brief, the examiner wrote an Examiner's Answer, which was mailed on May 2, 2006. In response to the Examiner's Answer, the applicant filed a Reply Brief and a Request for Oral Hearing on July 7, 2006. After receiving the Reply Brief, the examiner then sent out an Advisory Action indicating that the Reply Brief would not be considered because it is not in compliance with 37 CFR 41.41(a). The Reply Brief has not been considered pursuant 41.41 because new evidence is prohibited in a Reply Brief. The examiner also indicated that the information disclosure statement filed July 7, 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98. Therefore, it has been placed in the application file, but the information referred to therein has not been considered as to the merits. In response to the examiner's Advisory Action, the applicant then filed this Petition on October 10, 2006 and a Supplemental Reply Brief on October 11, 2006. Petitioner is requesting 1) to have the Supplemental Reply Brief entered because petitioner contends that it does not include new

evidence, 2) to strike Paper No. Office communication (Paper No. 20060803) and remove that paper for the prosecution history, 3) to forward Appellant's Substitute Appeal Brief to the Board of Patent Appeals and Interferences and 4) to grant Applicant such other and further relief as justice may require.

Petitioner argues that the examiner's Advisory Action is improper because it is incomplete under 37 CFR 1.104 and is inappropriate under 37 CFR 41.41. Petitioner argues that the examiner did not notify appellant of the reason for non-compliance because no "non-admitted affidavit or other evidence" was submitted by appellant. Petitioner further argues that no evidence was submitted because neither 37 CFR 41.2 the *Definitions*, nor 37 CFR 41.41(a) defines the term *non-admitted other evidence*. Petitioner therefore has interpreted the term *non-admitted other evidence* to mean declarations or exhibits. Petitioner further argues that neither the Information Disclosure Statement (form PTO-1449) nor the *Evidence Appendix* accompanying Appellant's Reply Brief may be properly characterized as "non-admitted affidavits or other evidence", because the items listed therein merely listed references mentioned among the arguments and remarks of Appellant's Reply Brief, and which were cited by the examiner's primary reference (Gokcebay, et al. 5,552,777) applied in the final rejection. Therefore, petitioner takes the position that the references are not new evidence because if the examiner performed a complete examination of the Appellant's application, the references should have already been considered.

In response to the petitioner's argument that the examiner did not notify appellant of the reason for non-compliance, it is believed that one could have easily gleaned from the record that the listing of references in the evidence appendix is what the examiner considered to be the new evidence. This is so because the evidence appendix filed with the Appeal Brief filed on December 14, 2006 contained no evidence. Therefore, any addition to the evidence appendix in any Reply Brief would constitute "new" evidence since it was not included previously in the evidence appendix of the Appeal Brief. Hence, the examiner's Office communication is complete in regard to this issue.

In response to the definition given to the term *non-admitted other evidence*, petitioner is correct in stating that neither 37 CFR 41.2 the *Definitions*, nor 37 CFR 41.41(a) specifically defines said term. Therefore, one would have to rely on the level of skill of one of ordinary skill in the art and the dictionary definition of evidence. Thus, according to www.dictionary.com, the term evidence means "A thing or things helpful in forming a conclusion or judgment". Dictionary.com also indicates that synonyms for evidence are "information, deposition, and affidavit". Therefore, it appears that the definition of evidence would encompass any information, deposition, or affidavit that would help one to form a conclusion or judgment. Thus, since any prior art reference would help one form a conclusion or judgment, it would clearly be considered as evidence. Hence, since the prior art references cited by the Appellant on the Information Disclosure Statement (form PTO-1449) were not cited previously on any Notices of References Cited (form PTO-892) or Information Disclosure Statements (form PTO-1449) they are considered to be new evidence. Therefore, the examiner's position on the new evidence appears to be well founded and correct. Further, although an examiner does not cite a prior art reference that is listed on a prior art reference that was cited by the examiner on a PTO-892, it

does not mean that the examiner did not perform a complete search of the application. There is almost an infinite number of references cited on references cited on references that the examiner could cite on a PTO-892 during the examination of an application. However, while the examiner may look at a great number of these references, the examiner usually only cites what he/she feels as the most pertinent references to each application. In the instant case, there is no evidence that would lead one to believe that the examiner did not perform a thorough search and evaluation of the present application.

For the above reasons, it is believed that the references submitted in the evidence appendix would constitute new evidence. Therefore, since a Reply Brief cannot contain new evidence, the Appellant's Reply Brief will not be entered on those grounds. Furthermore, even if the listing of references were not considered as new evidence, they are clearly a submission of prior art, i.e. an information disclosure statement (IDS). Therefore, as indicated by the examiner, since the IDS is not in compliance with 37 CFR 1.97 and 1.98, the listing of references will not be considered for this reason. The Appellant's IDS does not comply with 37 CFR 1.97 (d). The Appellant has neither included the statement specified in paragraph (e) of section 1.97 nor paid the fee set forth in § 1.17(p). Thus, the IDS is not in compliance and will not be considered.

Petitioner's request to have the Supplemental Reply Brief entered is **DENIED** for the reasons set forth above.

The request to strike Paper No. Office communication (Paper No. 20060803) and remove that paper for the prosecution history is **DENIED** because it is part of the prosecution history of this application.

In conclusion, the application will be forwarded to the Board of Patent Appeals and Interferences so they may render their decision. Also, it is not believed that petitioner is owed any further relief at this time.

SUMMARY: The petition is **DENIED**

Any questions regarding this decision should be directed to Supervisory Patent Examiner Brian Glessner at 571-272-6843.

Donald T. Hajec
Director
Patent Technology Center 3600
571-272-5150

BG/KD: 12/4/06

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TECHNOLOGY CENTER 3600

Robert E. Bushnell
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In re Application of Richard G. Hyatt, Jr.
Appl. No.: 10/440,308
Filed: May 19, 2003
For: ELECTROMECHANICAL CYLINDER PLUG

DECISION ON RENEWED PETITION REQUESTING ENTRY OF A REPLY BRIEF AND A SUBSTITUTE REPLY BRIEF UNDER 37 CFR 1.181

This is a decision on the renewed petition filed February 14, 2007 under 37 CFR 1.181 requesting entry of the Reply Brief filed on July 7, 2006 and the Substitute Reply Brief filed on October 11, 2006. There is no fee required for this petition.

The petition is **DENIED.**

After review of the above file, the file history shows that an Appeal Brief was filed on December 14, 2005. In response to the Appeal Brief, the examiner wrote an Examiner's Answer, which was mailed on May 2, 2006. In response to the Examiner's Answer, the applicant filed a Reply Brief and a Request for Oral Hearing on July 7, 2006. After receiving the Reply Brief, the examiner then sent out an Advisory Action indicating that the Reply Brief would not be considered because it is not in compliance with 37 CFR 41.41(a). The Reply Brief has not been considered pursuant 41.41 because new evidence is prohibited in a Reply Brief. The examiner also indicated that the information disclosure statement filed July 7, 2006 fails to comply with the provisions of 37 CFR 1.97, 1.98. Therefore, it has been placed in the application file, but the information referred to therein has not been considered as to the merits. In response to the examiner's Advisory Action, the applicant then filed a Petition on October 10, 2006 and a Substitute Reply Brief on October 11, 2006. In response to the Substitute Reply Brief, the

examiner sent out a second Advisory Action indicating that it would not be entered for the same reasons the Reply Brief was not entered. Also, on December 14, 2006, a petition decision was sent out indicating that the petition filed on October 10, 2006 was denied. Finally, applicant then filed this Renewed Petition on February 14, 2007 requesting 1) to have the Substitute Reply Brief entered because petitioner contends that it does not include new evidence, 2) to have the Reply Brief entered because it does not include new evidence, 3) to identify each item of "new evidence" alluded to by the office communication mailed on August 3, 2006, 4) to accord applicant an opportunity to revise the Reply Brief to remove the "new evidence" alluded to by the statement in the office communication mailed on August 3, 2006, 5) to forward applicant's Reply Brief to the Board of Patent Appeals and Interferences, 6) to forward applicant's Substitute Reply Brief to the Board of Patent Appeals and Interferences, and 7) to grant Applicant such other and further relief as justice may require.

It appears that appellant's arguments are substantially the same arguments that were presented in the previous petition filed on October 10, 2006 and answered on December 14, 2006. These arguments have been reconsidered, but since the arguments were addressed in the decision on December 14, 2006, they will not be addressed again in this decision. However, the appellant does raise one new argument based on language that was used in the previous decision. The appellant argues the statement "This is so because the evidence appendix filed with the Appeal Brief filed on December 14, 2006 contained no evidence. Therefore, any addition to the evidence appendix in any Reply Brief would constitute "new" evidence since it was not included previously in the evidence appendix of the Appeal Brief." First, it should be noted that a typographical error was made in the above statement. The Appeal Brief was not filed on December 14, 2006. It was filed on December 14, 2005. The appellant is arguing that the Technology Center is taking the position that any evidence submitted in a Reply Brief that was not submitted in an Appeal Brief would be considered new evidence. However, that is not the case. That position was only taken for this specific case based on the facts and prosecution history of this particular application. The references listed on the PTO 1449 in the appellant's Reply Brief and Substitute Reply Brief were never listed on a PTO 1449 or PTO 892 prior to the submission of said Briefs. Therefore, the references were considered new evidence and the briefs were not entered because the briefs did not conform to 37 CFR 41.41 and the IDS did not conform with 37 CFR 1.97 and 1.98 as clearly pointed out in the previous petition decision.

For the above reasons and the reasons set forth in the Petition decision of December 14, 2006, it is believed that the references submitted in the evidence appendix would constitute new evidence. Therefore, as stated in the previous decision, since a Reply Brief cannot contain new evidence, the Appellant's Reply Brief and Substitute Reply Brief will not be entered on those grounds. Furthermore, even if the listing of references were not considered as new evidence, they are clearly a submission of prior art, i.e. an information disclosure statement (IDS). Therefore, as indicated by the examiner, since the IDS is not in compliance with 37 CFR 1.97 and 1.98, the listing of references will not be considered for this reason. The Appellant's IDS does not comply with 37 CFR 1.97 (d). The Appellant has neither included the statement specified in paragraph (e) of section 1.97 nor paid the fee set forth in § 1.17(p). Thus, the IDS is not in compliance and will not be considered.

Petitioner's request to have the Supplemental Reply Brief entered is **DENIED** for the reasons set forth above and in the Petition Decision of December 14, 2006.

Petitioner's request to have the Reply Brief entered is **DENIED** for the reasons set forth above and in the Petition Decision of December 14, 2006.

Petitioner's request to have each item of "new evidence" alluded to by the office communication mailed on August 3, 2006 identified has been fulfilled in both this petition decision and the previous petition decision. The material being considered as new evidence are the twenty-two (22) references listed on the PTO 1449 located in the evidence appendix of both the Substitute Reply Brief and the Reply Brief.

Petitioner's request to have an opportunity to revise the Reply Brief to remove the "new evidence" alluded to by the statement in the office communication mailed on August 3, 2006 is **DENIED** for the reasons set for above and in the Petition Decision of December 14, 2006, and because Petitioner is outside of the two month period in which appellant is allowed to file a Reply Brief according to 37 CFR 41.41(a)(1).

In conclusion, the application will be forwarded to the Board of Patent Appeals and Interferences so they may render their decision. However, if the appellant plans to file a second renewed petition and would like that petition reviewed by a different party, the appellant should specifically ask for review of the TC Director's decision by the Director of the USPTO. Also, it is not believed that petitioner is owed any further relief at this time.

SUMMARY: The petition is **DENIED.**

Any questions regarding this decision should be directed to Supervisory Patent Examiner Brian Glessner at 571-272-6843.

Donald T. Hajec
Director
Patent Technology Center 3600
571-272-5150

BG/SM: 5/2/07
SM

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OFFICE OF PETITIONS

In re Application of :
Richard G. Hyatt, Jr. :
Application No. 10/440,308 :
Filed: May 19, 2003 :
Attorney Docket No.: P56895 :

ON PETITION

This is a decision on the petition filed July 23, 2007 under 37 CFR 1.181(a)(3) requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated May 23, 2007, which refused to compel the entry of the Reply Brief filed July 7, 2006 and the Substitute Reply brief filed October 11, 2006.

The petition to overturn the decision of the Technology Center Director dated May 23, 2007, is **DENIED**[1].

BACKGROUND

An Appeal Brief was filed on March 11, 2005 and a Substitute to the March 11, 2005 Appeal Brief was filed March 9, 2005.

On April 1, 2005, a Notification of Non-Compliant Appeal Brief was mailed indicating that the Substitute Appeal Brief does not present an argument under a separate heading for each ground of rejection on appeal.

A Supplement to the Appeal Brief was filed August 1, 2005.

On November 14, 2005, a Notification of Non-Compliant Appeal Brief was mailed indicating that the brief does not contain a statement of the status of all claims or does not identify the appealed claims.

A Supplement to the Appeal Brief was filed December 14, 2005 with a Petition to the Technology Center Director under 37 CFR 1.181 requesting entry of this Supplement to the Appeal Brief.

The petition to the Technology Center Director was granted on April 10, 2006.

On May 2, 2006, an Examiner's Answer was mailed.

A Reply Brief and Request for Oral Hearing was filed on July 7, 2006.

On August 7, 2006, a letter was mailed indicating that the Reply Brief was not considered because it contained new evidence and thus, was not in compliance with 37 CFR 41.41(a), and that the Information Disclosure Statement (IDS) filed with the reply brief did not comply with 37 CFR 1.97 and 1.98.

On October 10, 2006, a petition was filed requesting entry of a Substitute Reply Brief, which was filed October 11, 2006.

On December 14, 2006, a decision denying the October 10, 2006 petition was mailed, and, on December 20, 2006, a letter was mailed indicating that the Substitute Reply Brief would not be entered for the same reasons the Reply Brief was not entered.

On February 14, 2007, a request for reconsideration of the petition decision of December 14, 2006 was filed.

On May 23, 2007, a decision was mailed denying the February 14, 2007 request for reconsideration.

The instant petition was filed July 23, 2007.

On February 4, 2008, the Board of Patent Appeals and Interferences returned the present application for consideration of the instant petition.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

37 CFR 41.33(d)(2) states:

> All other affidavits or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).

37 CFR 41.41 states:

(a)(1)Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

(2)A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(b)A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section.

(c)Extensions of time under § 1.136 (a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136 (b) of this title for extensions of time to reply for patent applications and § 1.550 (c) of this title for extensions of time to reply for ex parte reexamination proceedings.

37 CFR 1.97 (d) states:

(d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:

(1) The statement specified in paragraph (e) of this section; and

(2) The fee set forth in § 1.17(p).

37 CFR 1.98 states:

(a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

(1) A list of all patents, publications, applications, or other information submitted for consideration by the Office. U.S. patents and U.S. patent application publications must be listed in a section separately from citations of other documents. Each page of the list must include:

(i) The application number of the application in which the information disclosure statement is being submitted;

(ii) A column that provides a space, next to each document to be considered, for the examiner's initials; and

(iii) A heading that clearly indicates that the list is an information disclosure statement.

(2) A legible copy of:

(i) Each foreign patent;

(ii) Each publication or that portion which caused it to be listed, other than U.S. patents and U.S. patent application publications unless required by the Office;

(iii) For each cited pending unpublished U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and

(iv) All other information or that portion which caused it to be listed.

(3)(i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein.

(ii) A copy of the translation if a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).

(b)(1) Each U.S. patent listed in an information disclosure statement must be identified by inventor, patent number, and issue date.

(2) Each U.S. patent application publication listed in an information disclosure statement shall be identified by applicant, patent application publication number, and publication date.

(3) Each U.S. application listed in an information disclosure statement must be identified by the inventor, application number, and filing date.

(4) Each foreign patent or published foreign patent application listed in an information disclosure statement must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application.

(5) Each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication.

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications as specified in paragraph (a) of this section may be submitted without copies of the other patents or publications, provided that it is stated that these other patents or publications are cumulative.

(d) A copy of any patent, publication, pending U.S. application or other information, as specified in paragraph (a) of this section, listed in an information disclosure statement is required to be provided, even if the patent, publication, pending U.S. application or other information was previously submitted to, or cited by, the Office in an earlier application, unless:

(1) The earlier application is properly identified in the information disclosure statement and is relied on for an earlier effective filing date under 35 U.S.C. 120; and

(2) The information disclosure statement submitted in the earlier application complies with paragraphs (a) through (c) of this section.

MPEP 609.05(c) states in pertinent part:

> Occasionally, documents are submitted and relied on by an applicant when replying to an Office action. These documents may be relied on by an applicant, for example, to show that an element recited in the claim is operative or that a term used in the claim has a recognized meaning in the art. Documents may be in any form but are typically in the form of an affidavit, declaration, patent, or printed publication.
>
> For example, if applicant submits and relies on three patents as evidence in reply to the first Office action and also lists those patents on a ** PTO/SB/08A and 08B along with two journal articles, but does not file a statement under 37 CFR 1.97(e) or the fee set forth in 37 CFR 1.17(p), it would be appropriate for the examiner to indicate that the teachings relied on by applicant in the three patents have been considered, but to line through the citation of all five documents on the ** PTO/SB/08A and 08B and to inform applicant that the information disclosure statement did not comply with 37 CFR 1.97(c).

MPEP 1205.02 (ix) states in pertinent part:

> An appendix containing copies of any evidence submitted pursuant to 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See 37 CFR 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

OPINION

Petitioner seeks reversal of the Technology Center Director's decision of May 23, 2007, on the grounds that the decision is contrary to the revised Rules and ignores the underlying factual basis presented by the prosecution history of this application.

Accordingly, petitioner requests that the Reply Brief and Substitute Reply Brief be entered and forwarded to the Board of Patent Appeals and Interferences (the Board); that each item of "new evidence" alluded to in the Office communication characterized as paper number 20060803 be identified; and that applicant be accorded an opportunity to revise the Reply Brief or Substitute Reply Brief to remove the "new evidence." Alternatively, petitioner requests confirmation that the Director has delegated to the Technology Center authorization to refuse to determine the scope and content of the prior art or to ascertain the difference between the prior art and the claims at issue.

In support of these requests, petitioner contends that the decision of the Technology Center Director lacked a legal and factual basis; that no new evidence is presented in either the Reply Brief or Substitute Reply Brief; that Office communication characterized as paper number 20060803 did not state a reason for non-compliance with 37 CFR 41.41 since no non-admitted affidavit or other evidence was identified, and the new evidence and reason for non-compliance identified in the Technology Center Director's decision ignored the function of the Reply Brief and the novel statements, assertions and interpretations contained in the Examiner's Answer; that no non-admitted affidavit or other evidence is present in either the Reply Brief or Substitute Reply Brief; and that discussion of the references introduced in the Reply Brief and repeated in the Substitute Reply Brief is necessary to address the arguments presented in the Examiner's Answer in regard to the rejection of the claims under 35 USC 103.

The decision of the Technology Center Director cites the "new evidence" at issue as 22 references listed on the PTO 1449, Information Disclosure Statement (IDS), located in the Evidence Appendix of the Reply Brief and Substitute Reply Brief, which fulfills the request that each item of "new evidence" be identified. Also, a careful review of the prosecution history of the present application reveals that the US patents identified in the Evidence Appendix of the Reply Brief and Substitute Reply Brief in relation to US patent number 5,552,777 were cited on IDSs filed prior to the final rejection and considered by the examiner in this application. However, four European patents and one Swiss patent identified in relation to US patent number 5,542,274 were not previously cited on an IDS or on a PTO 892, Notice of References Cited by the examiner, in this application.

The fact that a patent is "evidence" with respect to the prosecution of a patent application is well established. For example, MPEP section 609.05(c) recognizes that a patent is a type of document that may be submitted in a patent application as evidence directed to an issue of patentability raised in an Office action. Also, both the Reply Brief and Substitute Reply Brief identify the foreign patents in question in an "Evidence" Appendix.

The issue is whether these foreign patents are "new" evidence under 37 CFR 41.41. Petitioner asserts that these patents are not "new" evidence since they were discussed in US 5,542,274, which was considered by the examiner. However, these references were only briefly mentioned in the background section of US 5,542,274 in relation to the state of the art, and were not incorporated in their entirety into US 5,542,274 for full consideration of their respective disclosures. As correctly recognized by the Technology Center Director, these foreign patents are new evidence under 37 CFR 41.41 since the examiner did not previously confirm their full consideration on an IDS or a Notice of References Cited.

An orderly and fair administrative process necessitates that, in the context of patent appellate review, a reviewing body not consider prior art references that were not previously considered. See In re Thrift, 298 F.3d 1357, 1367 [63 USPQ2d 2002] (Fed. Cir. 2002)(refusing to sustain an obviousness rejection based on a new prior art reference not relied on by the Board because it would require a determination of the scope of that reference and whether it provided a motivation to combine); In re Margolis, 785 F.2d 1029, 1031-32 [228 USPQ 940] (Fed. Cir. 1986)(refusing to consider anticipation and obviousness grounds based on prior art references submitted to the examiner but not considered by the examiner or the Board). Therefore, in accordance with the regulations governing appeal to the Board of Patent Appeals and Interferences, references presented to the Board in support of appellant's arguments against obviousness must have been considered by the examiner and not merely available to the examiner.

The Technology Center Director's reference to 37 CFR §§ 41.41, 1.97 and 1.98 and the corresponding explanation as to how these regulations pertain to the circumstances of the present application provided sufficient legal and factual basis for his decision. Moreover, the Technology Center Director correctly recognized the function of the Reply Brief within an orderly and fair appeal process in denying the admission of new evidence. 37 CFR 41.33(d)(2) is clear that evidence filed after the date of filing an appeal may only be introduced if prosecution is reopened and the appeal withdrawn. Also, MPEP 1205.02 (ix) notes, in regard to an evidence appendix in the appeal process, that unentered evidence is not permitted and that 37 CFR 41.33 governs the treatment of evidence presented after appeal. Since prosecution has not been reopened in this application and the statements, assertions, and interpretations presented in the Examiner's Answer do not amount to new grounds of rejection, the Technology Center Director was correct to prevent the entry of the new evidence in reply to the Examiner's Answer. Moreover, preventing the entry of the new evidence does not deny appellant his last word arbitrarily since 37 CFR 41.41 forbids the entry of new evidence in a reply brief.

In regard to the requested revision of the Reply Brief and Substitute Reply Brief to remove the new evidence, the issue at hand is not whether petitioner in good faith

followed the rules as he interpreted them; rather it is whether petitioner has properly followed the statutes and regulations with the exercise of reasonable care and diligence in this instance. In the present case, petitioner filed a Reply Brief and a Substitute Reply Brief with new or non-admitted evidence therein. As the Technology Center Director correctly noted, a revised Reply Brief cannot be filed at this time since it would be outside the time period for filing a Reply Brief set forth in 37 CFR 41.41(a)(1). Also, petitioner has not shown that the failure to timely file an acceptable Reply Brief is an extraordinary situation in which justice requires waiver of the rules. Circumstances resulting from Appellant's, or Appellant's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc. 195 USPQ 586, 588 (Comm'r Pats. 1977).

For the reasons set forth above, the Technology Center Director's decisions to refuse petitioners' request to have the Reply Brief filed June 7, 2006 and the Substitute Reply Brief filed October 11, 2006 entered and forwarded to the Board are not shown to be in clear error. Also, the Technology Center Director's decision not to allow revision of the Reply Brief and Substitute Reply Brief to remove the new evidence is not shown to be in clear error.

Furthermore, the Director has not delegated to the Technology Center authorization to refuse to determine the scope and content of the prior art or to ascertain the difference between the prior art and the claims at issue. Determining the scope and content of the prior art and the difference between the prior art and the claims at issue does not require the full consideration of every item of prior art in existence. Here, the Technology Center correctly considered what was determined to be an appropriate amount of prior art to support the opinion on the patentability of the claimed invention presented by the examiner. The scope and content of the considered prior art was determined and the difference between the considered prior art and the claims at issue was ascertained, as demonstrated in the examiner's rejections and Answer to the Appeal Brief.

Petitioner further complains that the examiner has ignored the requirements of 35 USC 103. Petitioner appears to be unaware that a rejection, or the continuation of a rejection, of a claim cannot be reviewed on petition. Rather, as explained in MPEP 1201, the mechanism for having the propriety of a given rejection reviewed is by way of appeal before the Board of Patent Appeals and Interferences under 35 USC 134 and 37 CFR 1.191. The issues of whether, e.g., the examiner properly analyzed the claims in light of the specification disclosure before making the rejections, or whether the rejections over prior art were properly maintained relate to the merits of those rejections and such can only be considered on appeal and will not be considered on petition. See 37 CFR 1.181(a); see also Boundy v. U.S. Patent & Trademark Office, 73 USPQ2d

1468 (DC Eva 2004), appeal dismissed, 2004 U.S. App. Lexis 26384 (Fed. Cir. 2004). It is well settled that the Director will not, on petition, usurp the functions or impinge upon the jurisdiction of the Board of Patent Appeals and Interferences. See In re Dickerson, 299 F.2d 954, 958, 133 USPQ 39, 43 (CCPA 1962); Baylev's Restaurant v. Bailey's of Boston, Inc. 170 USPQ 43, 44 (Comm'r Pat. 1971).

DECISION

A review of the record indicates that the Technology Center Director did not abuse his discretion or act in an arbitrary and capricious manner in the petition decision of May 23, 2007. The record establishes that the Technology Center Director had a reasonable basis to support his findings and conclusion.

The petition is granted to the extent that the decision of the Technology Center Director of May 23, 2007 has been reviewed, but is denied with respect to making any change therein. As such, the decision of May 23, 2007 will not be disturbed. The petition is **denied**.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571) 272-6692.

John J. Love
Deputy Commissioner for
Patent Examination Policy

cp/db

[1] This decision may be viewed as a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02.

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ON PETITION

In re Application of :
Richard G. Hyatt, Jr. :
Application No. 10/440,308 :
Filed: May 19, 2003 :
Attorney Docket No.: P56895 :

This is a decision on the petition filed December 30, 2008 again requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated May 23, 2007, which refused to compel the entry of the Reply Brief filed July 7, 2006 and the Substitute Reply brief filed October 11, 2006.

The petition is **DENIED**.

Inasmuch as the authority for deciding petitions invoking the supervisory authority of the Director of the USPTO under 37 CFR 1.181 has been delegated to the Deputy Commissioner for Patent Examination Policy (MPEP 1002.02(b)(15)), the review of a decision by a Technology Center Director is properly treated by the Deputy Commissioner for Patent Examination Policy.

The decision by the Technology Center Director was fully and finally treated in the decision of October 30, 2008. The decision clearly stated it was a final agency action within the meaning of 5 U.S.C. § 704 for purposes of petitioner's seeking judicial review, and further, that the USPTO would not further consider or reconsider this matter.

Petitioner's arguments regarding the previous decision are noted. However, as discussed in the previous decision, the actions of the Technology Center Director were not in error. While petitioner may not agree with the USPTO's actions in this case, full administrative review was provided for the matters under petition.

John J. Love
Deputy Commissioner for
Patent Examination Policy

cp/db

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OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA VA 22320

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Masanori Takahashi et al :
Application No. 10/440,310 :
Filed: May 19, 2003 :
Attorney Docket No. 115957 :

This is a decision on the petition, filed February 4, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 1, 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 2837 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE NW
WASHINGTON, DC 20005

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AUG 29 2007

OFFICE OF PETITIONS

In re Application of
Lawrence M. Burns et al
Application No. 10/440,311
Filed: May 19, 2003
Attorney Docket No. 1875.3770000

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed August 22, 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 July 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 the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2829 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment.*

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CARSTENS & CAHOON, LLP
P O BOX 802334
DALLAS TX 75380

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OFFICE OF PETITIONS

In re Application of	:	
Walton et al.	:	
Application No. 10/440,335	:	DECISION ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. CZDOS.00007	:	

This is a decision on the petition, filed September 9, 2005, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the non-final Office action mailed January 10, 2005, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on October 11, 2005.

Petitioner asserts that the Office action dated January 10, 2005, was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. 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 matter is being referred to the Technology Center technical support staff of Art Unit 3753 for re-mailing the Office action of January 10, 2005. The period for reply will run from the mailing date of the Office action.

Liana Chase
Petitions Examiner
Office of Petitions

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ROBERT A. KENT
HALLIBURTON ENERGY SERVICES
2600 SOUTH 2ND STREET
DUNCAN, OK 73536

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OFFICE OF PETITIONS

In re Application of	:	
Eoff et al.	:	
Application No. 10/440,337	:	ON PETITION
Filed: May 16, 2003	:	
Attorney Docket No. 2001-1P-005267	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 4, 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 an Amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to Technology Center 1700 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Patent No. 7,060,874	:	
Issue Date. June 13, 2006	:	
Application No. 10/440,352	:	NOTICE
Filed: May 16, 2003	:	
Attorney Docket No. 02307O-116510US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

The patent file will be forwarded to the Files Repository.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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P.O. BOX 7680
NEWPORT BEACH, CA 92660

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AUG 3 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Audimoolan et al.	:	
Application No. 10/440,394	:	DECISION
Filed: May 16, 2003	:	ON PETITION
For: DECISION SUPPORT SYSTEM	:	
FOR SUPPLY CHAIN MANAGEMENT	:	

This is a decision on the Petition to Withdraw Holding of Abandonment Under 37 CFR § 1.181(a), filed October 5, 2004. The delay in treating this petition is regretted. Applicant requests alternative relief under 37 CFR 1.137(b).

The petition under 37 CFR § 1.181(a) is **dismissed.**

The petition under 37 CFR 1.137(b) is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application ("Notice"), mailed July 8, 2003. The Notice set a two (2) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned on September 9, 2003. A Notice of Abandonment was mailed on September 8, 2004.

Applicant's Assertion

Applicant responds with the instant petition wherein Applicant avers that a Change of Correspondence Address was filed on June 21, 2003. Applicant files a copy of the Change of Correspondence Address.

A review of the Change of Correspondence Address filed by Applicant with the instant petition reveals that the Change of Correspondence Address was filed in the Office on June 21, 2004. This filing date for the Change of Correspondence Address is consistent with the date entered thereon: June 17, 2004. Office records confirm that a Change of Correspondence Address was filed by Applicant on June 21, 2004.

Since the Notice was mailed July 8, 2003, over 11 months prior to the filing of the Change of Correspondence Address, the petition is dismissed.

Petition under 37 CFR 1.137(b)

A review of Office receords reveal that an executed oath or declaration was not filed with the instant petition for revival[1]. 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); (**2**) the petition fee required by 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**) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

This petition lacks item (**2**) above. At the filing of the petition, applicant failed to file the required reply.

Petitioner's deposit account has been charged the petition fee for a petition under 37 CFR 1.137(b), $685.00[2].

---

[1] Office records indicate that an executed oath/declaration was filed on January 21, 2005.

[2] The fee was $685.00 in October, 2004. Applicant authorized $130.00 at the filing of the petition. Accordingly, Applicant has been charged the difference, $555.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3232.

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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SUITE 1600
660 NEWPORT CENTER DRIVE
P.O. BOX 7680
NEWPORT BEACH, CA 92660

In re Application of :
Abdumoolam et al. :
Application No. 10/440,394 :
Filed: May 16, 2003 :
For: DECISION SUPPORT SYSTEM :
FOR SUPPLY CHAIN MANAGEMENT :

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OFFICE OF PETITIONS

~~In re Application of~~ :
~~Gregory G. Blevins~~ :
~~Application No. 60/414,533~~ :
~~Filed: May 17, 2002~~ :
~~For: DECISION SUPPORT SYSTEM~~ : ON PETITION

This is a decision on the Petition to Provide Serial Number for a Provisional Patent Application Under 37 CFR § 1.182, filed November 3, 2004, requesting that the above-identified application be accorded a serial number and a filing date of May 16, 2002. The petition is properly treated under 37 CFR 1.10(e).

Applicants request the acceptance of the application with the filing date of May 16, 2002, on the basis that the application was purportedly deposited in Express Mail service (Express Mail mailing label #EL599699123US) on May 16, 2002 (pursuant to the requirements of 37 CFR 1.10), and that the submission was not received by the Patent and Trademark Office.

In support, the petition is accompanied by a letter from the United States Postal Service ("USPS") which states that Express Mail Item Number EL599699123US was delivered on May 17, 2002 to this Office. Applicant also provides a copy of the Provisional Application Cover Sheet for the above-identified application which contains the same Express Mail Mailing Number. Applicant does not provide a copy of the Express Mail Label.

STATUTE AND REGULATION

35 U.S.C. § 21(a) states that:

> The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director.

In May, 2004, section 1.10(a) of title 37, Code of Federal Regulations, stated that:

> Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date.

Placing the "Date-In" on the Express Mail label by the postal clerk establishes that the package was actually received by the Postal Service. That is the date that verifies that the package was actually mailed.

Paragraph (b) of 37 CFR 1.10 cautions

> Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

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.

The Applicable Rule

Paragraph (e) of 37 CFR 1.10 states that:

> Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

> (f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

Applicant has failed to provide a copy of the Express Mail Label. As such, the filing date requested is a date other than the date in on the Express Mail Label, and 37 CFR 1.10(d)(3) applies.

Paragraph (d)(3) of 37 CFR 1.10 states requires that:

> (3) [t]he petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Here, Applicant has provided a letter from the USPS that establishes May 17, 2002 as the filing date of the application.

Accordingly, the petition is granted insofar as the application papers have been accepted; however, the filing date accorded the application will be the date indicated on the letter from the USPS; May 17, 2002.

Applicant is advised to file a petition for a delayed priority claim under 37 CFR 1.78(a)(6) to correct priority in application serial number 10/440,394.

No petition fee is due and none has been charged.

The application will be referred to the Office of Initial Patent Examination for further processing as a provisional application <u>with a filing date of May 17, 2002</u>, using the application papers filed on that date.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Srinivasaragavan Audimoolam et al	:	
Application No. 10/440,394	:	DECISION ON PETITION
Filed: May 16, 2003	:	TO WITHDRAW
Attorney Docket No. 016799.0016	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 4, 2005.

The request is **NOT APPROVED**.

A review of the file record indicates that Jan P. Weir does not have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.136(b) is not applicable.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Irvin Dingle at 571-272- 3210.

Amelia Au
Petitions Examiner
Office of Petitions

cc: Nexgenix, Inc. c/o Rick Dutta
2 Peters Canyon, Suite 200
Irvine, CA 92606

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OFFICE OF PETITIONS

In re Application of	:	
Srinivasaragavan Audimoolam et al	:	
Application No. 10/440,394	:	DECISION ON PETITION
Filed: May 16, 2003	:	TO WITHDRAW
Attorney Docket No. 016799-0016	:	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 8, 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 Monique M. Heyninck on behalf of all attorneys of record. Applicant is reminded that there is no attorney of record at this time.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle for
Amelia Au
Petitions Examiner
Office of Petitions

cc: Nexgenix, Inc. c/o Rick Dutta
2 Peters Canyon, Suite 200
Irvine, CA 92606

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In re Application of
Srinivasaragavan Audimoolam et al
Application No. 10/440,394
Filed: May 16, 2003
Attorney Docket No. 016799-0016

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 8, 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 Monique M. Heyninck on behalf of all attorneys of record. Applicant is reminded that there is no attorney of record at this time.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Dwin Potter for
Amelia Au
Petitions Examiner
Office of Petitions

cc: Nexgenix, Inc. c/o Rick Dutta
2 Peters Canyon, Suite 200
Irvine, CA 92606

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Paper No. 030304

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Oakville, ON L6M 2G2 CA CANADA

MAR 18 2004

In re Application of:	:	
PODOLEANU *et al.*	:	DECISION ON PETITION
Serial No.: 10/440,397	:	TO MAKE SPECIAL
Filed: May 19, 2003	:	
Attorney Docket No.: **6312-11/DEH**	:	

This is a decision on the petition under 37 C.F.R. § 1.102(c), filed August 26, 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 copy of the passport for David A. Jackson showing 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

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JJGJR.: 04-07

Paper No: __

JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON DC 20004

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OFFICE OF PETITIONS

In re Application of	:	
Moll, et al.	:	
Application No. 10/440,406	:	DECISION
Filing Date: 19 May, 2003	:	
Attorney Docket No.: P66392US1	:	

This is a decision on the petition filed on 13 November, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

For the reasons set forth below the petition as considered under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Restriction Requirement mailed on 10 May, 2005, with reply due absent extension of time on or before 10 June, 2005;[1]
- the application went abandoned after midnight 10 June 2005;

[1] Petitioner avers at page 2 of the petition that the "due date of [the reply was] November 10, 2005"; clearly this is incorrect. The mail date of the Office action (Restriction) was 10 May, 2005, and the shortened statutory period set forth therein by the Examiner was "1 MONTH FROM THE MAIL DATE OF [THE] COMMUNICATION."

- the record reflects no Status Inquiries filed in the seventeen (17) months between abandonment and the filing of the instant petition;
- the Office mailed the Notice of Abandonment on 22 November, 2005;
- on 13 November, 2006, Petitioner filed with the original petition (and fee), a reply in the form of an Election–however, it is noted that Petitioner's filing occurred almost exactly one year after the Notice of Abandonment and more than a year after the actual date of abandonment (discussed above).

It is not suggested that the former one- (1-) year deadline on filing of petitions under the provisions of 37 C.F.R. §1.137 was used herein as an unpaid extension of time. Petitioner is cautioned, however, that such practice if it should occur in the future could constitute a delay other than unintentional delay, which would not be proper.

It is noted as well that neither the transmittal, nor the reply, nor the petition appear to bear a certificate of mailing/transmission under the provisions of 37 C.F.R. §1.8 or §1.10.

The Statutes and Rules of Practice before the Office provide many tools for applicants, patentees and practitioners to protect their prospective or actual property rights and those of their clients. However, persons who fail to use the tools, fail to gain the protections.

Petitioners always are reminded of the burden of those registered to practice *and* all others who make representations before the Office, *inter alia*, to inquire into the underlying facts of representations made to the Office.[2]

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[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6]

(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] 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).

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
Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

Petitioner appears to have satisfied the regulatory requirements herein.

CONCLUSION

The petition as considered under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center 3700 for further processing in due course.

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[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.

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

COMMISSIONER FOR PATENTS
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VOLPE AND KOENIG, P.C.
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

COPY MAILED
AUG 25 2005
OFFICE OF PETITIONS

In re Application of :
Lam Harn :
Application No. 10/440,414 :
Filed: May 19, 2003 :
For: FRONT PANEL MOUNTING DEVICE :
FOR A DRAWER :

This is a decision in response to the petition under 37 CFR 1.137(b), filed July 22, 2005, to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed October 20, 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 28, 2004. The mailing of this Decision Precedes the mailing of a Notice of Abandonment.

With the instant petition, Petitioner has satisfied the requirements of a grantable petition under 37 CFR 1.137(b). A Reply in response to the October 20, 2004 Office action is filed with the instant petition. Accordingly, the petition is granted.

This application is being forwarded to Technology Center Art Unit 3637 for processing of the Reply filed July 22, 2005, in due course.

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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JUN 10 2005

In re Application of NAKAJIMA ET AL.	:	
Appl. No.: 10/440,423	:	**WITHDRAWAL FROM**
Filed: May 19, 2003	:	**ISSUE**
For: METHOD FOR MEASURING CONCENTRATION OF COMPONENT CONTAINED IN BODILY FLUID AND APPARATUS FOR MEASURING CONCENTRATION OF COMPONENT CONTAINED IN BODILY FLUID	:	*37 CFR 1.313*

The purpose of this communication is to inform you that the above identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn to permit reopening of prosecution. The reasons therefor will be communicated to you by the examiner.

U.S. Patent and Trademark Office records reveal that the issue fee and the publication fee have not been paid. If the issue fee and the publication fee have been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Fees Due, applicant may request that the previously submitted issue fee and publication fee be applied toward payment of the issue fee and publication fee in the amount identified on the new Notice of Allowance and Issue and Publication Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

The application is being forwarded to the examiner for action.

Janice A. Falcone
Director
Patent Examining Technology Center 2800

MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 300
MCLEAN, VA 22102

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/2/07

TO SPE OF : ART UNIT 3637

(10/440424)

SUBJECT : Request for Certificate of Correction on Patent No.: 7055919

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:

Lanna Mac
SPE

3637
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100

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AUG 03 2006

OFFICE OF PETITIONS

In re Application of :
Peterson et al. :
Application No. 10/440,433 : DECISION ON PETITION
Filed: May 16, 2003 :
Attorney Docket No. 2965.901US02 :

This is a decision on the petition under 37 CFR 1.181, filed May 27, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

On September 17, 2004, the Office mailed a Requirement for Restriction/Election, which set a one-month extendable period to respond. In the apparent absence of a timely filed response, the application became abandoned on October 18, 2004. A Notice of Abandonment was mailed on May 12, 2005.

In the present petition, petitioners asserted that they filed a timely response to the Restriction Requirement via facsimile transmission on October 15, 2004. In support of their assertion, petitioners submitted a copy of the response, containing a signed certificate of facsimile transmission dated October 15, 2004. Additionally, petitioners submitted a copy of the facsimile transmission cover sheet showing successful transmission of the response to (703) 872-9306 on October 15, 2004, at 8:40 AM.

Pursuant to 37 CFR 1.8:

> (b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and,

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

After reviewing the record and the papers submitted on petition, the response is considered timely filed on October 15, 2004. Accordingly, the petition is **granted**. The holding of abandonment is hereby withdrawn. The application will be restored to pending status in view of the fact that a response was timely submitted on October 15, 2004.

This matter is being referred to Technology Center Art Unit 2855.

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

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

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JAN 19 2007

OFFICE OF PETITIONS

In re Application of	:
Carlton B. Morgan et al	:
Application No. 10/440,440	: DECISION ON PETITION
Filed: May 16, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. PHA 24,235X	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 18, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed April 3, 2006.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and

(3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

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.

Additionally, the Request For Withdrawal As Attorney filed September 18, 2006 is unclear and not proper. It appears that only a change of address is requested. The proper form for a change of address is PTOSB/122.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 3762 for appropriate action on the amendment filed April 3, 2006, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

PHILIPS MEDICAL
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3003
22100 BOTHELL EVERETT HIGHWAY
BOTHELL, WA 98041-3003

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/440,440	05/16/2003	3762	934	PHA 24,235X	7	23	3

CONFIRMATION NO. 9144

CORRECTED FILING RECEIPT

OC000000022053798

OC000000022053798

24737
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

Date Mailed: 01/18/2007

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)

Carlton B. Morgan, Bainbridge Island, WA;
John F. Harris, Bellevue, WA;
Cecily Anne Snyder, San Francisco, CA;
James Daren Bledsoe, Albany, OR;
Curtis W. Freeman, Windham, NH;
David A. Johnson, Wappingers Falls, NY;
Helge Fossan, Stavanger, NORWAY;

Power of Attorney:

Tony Piotrowski--42080

Domestic Priority data as claimed by applicant

This application is a DIV of 09/675,320 09/29/2000 PAT 6,611,708
which is a CON of 09/227,480 01/07/1999 PAT 6,154,673
which is a CIP of 09/000,807 12/30/1997 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 07/14/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/440,440

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Multilingual defibrillator

Preliminary Class

607

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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JOHN G. CHUPA
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FARMINGTON HILLS, MICHIGAN 48334

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OCT 28 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Mark Manuel et al	:	
Application No. 10/440,454	:	
Filed: May 16, 2003	:	
Attorney Docket No. 199-015	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 20, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed July 15, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on September 16, 2003.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

The application is being forwarded to the Initial Patent Examination Unit.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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JAN 13 2005

TECHNOLOGY CENTER 3600

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

In re application of Jeffrey M. Campbell et al. Application No. 10/440,458 Filed: May 16, 2003 For: CONNECTOR APPARATUS AND SYSTEM INCLUDING CONNECTOR APPARATUS	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)**

This is a decision on the petition under 37 C.F.R. § 1.102(d) filed July 28, 2004 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(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 28, 2004, meets all of the requirements above and is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications; (2) to promptly examine this application out of turn; and (3) if any interfering application is discovered, to examine such application

simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference and appeal, if any, only if petitioner makes a prompt *bona fide* effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/jwk: 1/4/05

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HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

COPY MAILED

DEC 2 2 2003

OFFICE OF PETITIONS

In re Application of	:
Kevin J Conner et al	:DECISION GRANTING PETITION
Application No. 10/440,461	:UNDER 37 CFR 1.181
Filed: May 15, 2003	:
Attorney Docket No. H0004073	:

This is a decision on the petition filed September 8, 2003, which is being treated as a petition under 37 CFR 1.181 requesting a corrected Filing Receipt.

The petition is **granted**.

A corrected Filing Receipt which sets forth the correct inventive entity and the correct spelling of the first named inventor accompanies this decision on petition.

Petitioner also states that an amendment was mailed by Express Mail on July 14, 2003 claiming benefit of prior-filed Application No. 09/800,175, of which the instant application is a continuation-in-part. However, Office records fail to disclose receipt of this amendment. Nevertheless, since the amendment submitted with the instant petition claiming benefit of prior-filed Application No. 09/800,175 was filed within four months of the filing date of this application, the claim for priority to this application was timely filed as provided by 37 CFR 1.78(a)(2)(ii). Therefore, the corrected Filing Receipt will also reflect priority to prior-filed Application No. 09/800,175.

However, petitioner is advised that the "incorporation by reference statement" of prior-filed Application No. 09/800,175 is improper and should be deleted by way of an amendment under 37 CFR 1.121. 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.

Also, note MPEP Section 201.06(c), which states:

> For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application.

In view of the above, the incorporation by reference statement is improper.

Any questions concerning this decision on petition may be directed to the undersigned at (703) 305-8680.

This application is now before Technology Center AU 3661 for examination in due course.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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Paper No. 6

TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON, MA 02110

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OCT 23 2003

OFFICE OF PETITIONS

In re Application of	:
Steffen et al.	: DECISION ACCORDING
Application No. 10/440,467	: STATUS UNDER
Filed: May 16, 2003	: 37 CFR 1.47
Attorney Docket No. BSI-028	:
For: HANDLE WITH ANGLED ACTUATOR	:

This is in response to the petition under 37 CFR 1.47(a) filed September 22, 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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ALEXANDRIA, VA 22313-1450
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Paper No. 7

Mr. Andre Denys
44216 Felstone
Sterling Heights, MI 48313

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OCT 2 3 2003

OFFICE OF PETITIONS

Letter

In re Application of :
Steffen et al. :
Application No. 10/440,467 :
Filed: May 16, 2003 :
Attorney Docket No. BSI-028 :
For: HANDLE WITH ANGLED ACTUATOR :

Dear Mr. Denys:

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: TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON, MA 02110

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ROPES & GRAY LLP
PATENT DOCKETING 39/41
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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APR 2 0 2009

OFFICE OF PETITIONS

In re Application of
Mark E. Davis
Application No. 10/440,506
Filed: May 15, 2003
Attorney Docket No. ITI-P02-001

ON PETITION

This is a decision on the petition filed March 13, 2009 to withdraw the holding of abandonment pursuant to 37 CFR 1.181(a), or 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**.

The application was held abandoned for failure to file a timely response to the Final Office Action mailed January 8, 2008. A three (3) month period for reply was set. A response was filed March 31, 2008 however an Advisory Action was mailed April 21, 2008. A subsequent response was filed April 30, 2008 with a one month extension of time. Another Advisory Action was mailed June 18, 2008 advising that the amendment filed April 30, 2008 also did not place the application in condition for allowance. In the interim however, a Notice of Appeal and Pre-appeal Brief Request for Review were filed June 12, 2008 (June 9, 2008 certificate of mail date) with an extension of time request, extending the response date to June 8, 2008. An Appeal Brief would have been due within two months of the filing of the Notice of Appeal on June 12, 2008. However, the Notice of Panel Decision from Pre-Appeal Brief Review mailed August 12, 2008 advised that the time period for filing the appeal brief would be reset to be one month from the mailing of the decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. No response having been filed, a Notice of Abandonment was mailed on February 26, 2009.

Petitioner argues that a continuation application, application no. 12/319,711, was filed on January 9, 2009 pursuant to the provisions of 37 CFR 1.53(b).

While the period for filing an appeal brief is extendable up to five months pursuant to 37 CFR 1.136, no brief was filed and no extension of time request was filed when the continuation application was filed on January 9, 2009.

Petitioner acknowledges that an extension of time request was not filed but argues that the Petition for Extension of Time filed on April 30, 2008 and June 9, 2008 contained authorization language to charge their deposit account for "any" additional fees which

might have been due and therefore, the application was pending as of January 9, 2009 when the continuation application was filed.

Petitioner's arguments have been considered but are not persuasive.

As petitioner cites, Section 509.01(I) of the MPEP states, in part:

> A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application either for the entire pendency of the application or with respect to a particular paper filed. Many applications contain broad language authorizing <u>any</u> additional fees which might have been due to be charged to a deposit account. The U.S. Patent and Trademark Office will interpret such broad authorizations to include authorization to charge to a deposit account fees set forth in 37 CFR 1.16, and 1.17. (emphasis in original),

a review of the file does not reveal however that a general authorization to charge fees has been provided. On the two instances noted wherein the "any additional fees" language appears, petitioner is authorizing any additional fees related to those specific transactions. If the authorization was left to USPTO interpretation, the agency would not interpret the intent of the authorization to be a broad authorization.

In view thereof, the instant application had no co-pendency with Continuation Application No. 12/319,711 and thus the abandonment was proper and will not therefore be withdrawn.

Continuity is now established by this decision reviving the application and since this application is being revived for purposes of continuity only, this application is again abandoned in favor of continuation application no.12/319,711 filed January 9, 2009, pursuant to the provisions of 37 CFR 1.53(b).

The five month extension of time fee paid with the instant petition is outside of the maximum period obtainable and as such, will be credited back to deposit no. 18-1945.

All other requirements having been met, this matter is being referred to Technology Center 1636 for processing of the continuation application filed January 9, 2009.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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APR 2 1 2004

Technology Center 2100

Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, Pennsylvania 19103

In re Application of: Jeffrey Brady et al.	)	DECISION ON PETITION TO
Application No. 10/440,521	)	MAKE SPECIAL UNDER
Filed: May 16, 2003	)	M.P.E.P. §708.02(II):
For: SYSTEM AND METHOD FOR A	)	INFRINGEMENT
PLANNER	)	

This is a decision on the petition, filed August 14, 2003, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

A grantable petition under 37 C.F.R. §1.102(d), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R.§1.117(h) and a statement under 37 C.F.R. §1.102 by the applicant or assignee or statements by an attorney/agent registered to practice before the Patent and Trademark Office that (A) there is an infringing device or product actually on the market or method in use; (B) a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed: and (C) he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the prior art. Applicant ***must provide*** one copy of each of the ***references deemed most closely related*** to the subject matter encompassed by the claims.

Applicant's submission is deficient because no references have been submitted. Accordingly, the Petition is **DISMISSED**. The application file will be examined 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

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
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WASHINGTON, D.C. 20231
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Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, Pennsylvania 19103

MAILED

JUN 17 2004

Technology Center 2100

In re Application of: Jeffrey Brady et al. Application No. 10/440,521 Filed: May 16, 2003 For: SYSTEM AND METHOD FOR A PLANNER	)))))	DECISION ON PETITION TO MAKE SPECIAL UNDER M.P.E.P. §708.02(II): INFRINGEMENT

This is a decision on the petition, filed August 14, 2003, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

This is a decision on the petition, filed May 7, 2004, requesting reconsideration of the decision mailed April 21, 2004 denying Applicants request to make the above-identified application special under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement.

The original petition was denied for failure to provide any references. Applicant provides a copy of an IDS listing 3 US patent references. The fax information printed on the request for reconsideration establishes that 116 pages were received in the USPTO supporting the contention that references were submitted in accordance with the requirement although, the references apparently were not scanned. Applicant's submission meets all the criteria set out above

Accordingly, the Petition is **GRANTED**.

The application will be afforded expedited prosecution.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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GIBBONS P.C.
ONE GATEWAY CENTER
NEWARK NJ 07102

MAILED

MAY 21 2010

OFFICE OF PETITIONS

In re Application of	:	
Jeffrey Brady, et al.	:	
Application No. 10/440,521	:	DECISION GRANTING PETITION
Filed: May 16, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 107920-61596	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, May 20, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on April 7, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney documents must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

[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.*

This application is being referred to Technology Center AU 3623 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Jonathan M. Darcy**
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899-2207

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ALLEN A. DICKE, JR.
224 MALL WAY
ANAHEIM, CA 92804

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DEC 0 8 2004

OFFICE OF PETITIONS

In re Application of
Geoffrey C. Garth, et al.
Application No. 10/440,525
Filed: May 19, 2003
Attorney Docket No. 183-9.APP

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed September 28, 2004, under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Robert D. Fish appearing on the petition 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. However, if Mr. Fish 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 is GRANTED.

The instant nonprovisional application is the subject of an application filed in an eighteen month publication country on May 24, 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 March 17, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.

This application is being returned to Technology Center Art Unit 3764 for consideration of the amendment filed November 4, 2004.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

cc: ROBERT D. FISH
RUTAN & TUCKER, LLP
P. O. BOX 1950
611 ANTON BLVD., 14TH FLOOR
COSTA MESA, CA 92628-1950

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/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/440,525	05/19/2003	Geoffrey C. Garth	183-9.APP

CONFIRMATION NO. 8227

OC000000014687858

OC000000014687858

30367
ALLEN A. DICKE, JR.
224 MALL WAY
ANAHEIM, CA 92804

Date Mailed: 12/07/2004

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 03/17/2005.

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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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
10/440,526	05/16/2003	2142	1272	AP167HO	10	35	6

CONFIRMATION NO. 8229

CORRECTED FILING RECEIPT

OC000000011110668

20178
EPSON RESEARCH AND DEVELOPMENT INC
INTELLECTUAL PROPERTY DEPT
150 RIVER OAKS PARKWAY, SUITE 225
SAN JOSE, CA 95134

Date Mailed: 10/28/2003

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)

Steve Nelson, San Jose, CA;
Jason Harris, Mountain View, CA;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/07/2003

Projected Publication Date: 11/18/2004

Non-Publication Request: No

Early Publication Request: No

Title

Annotation management system

Preliminary Class

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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DEC 20 2006
OFFICE OF PETITIONS

OLE K. NILSSEN
408 CAESAR DRIVE
BARRINGTON, IL 60010

In re Application of
Ole K. Nilssen
Application No. 10/440,527
Filed: May 19, 2003
Attorney Docket No. None

ON PETITION

This is a decision in response to a petition under 37 CFR 1.137(b) to revive the above-identified application, filed June 27, 2006.

The petition is DISMISSED because it lacks the required petition fee pursuant to 37 CFR 1.17(m). It is noted that petitioner indicates that the fee was being submitted in the form of a check; however, no check was found enclosed.[1]

Further, it is noted that the petition was intended to be signed by applicant; however, the petition is not signed.

37 CFR 1.33(b) states that:

Amendments and other papers filed in the application must be signed by:

(1) An attorney or agent of record appointed in compliance with §1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of §1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undivided part interest; or

[1]See attached Fee Transmittal sheet with PTO notation attached.

(5) All of the applicants (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

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)" and include the requisite petition fee and a ratification of the unsigned petition.

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 decision may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment

OIPE IAP12
JUN 27 2006
PATENT & TRADEMARK OFFICE

PTO/SB/17 (01-06)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number

Effective on December 8, 2004. Pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2006

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 1,500.00

Complete if Known	
Application Number	10/440,527
Filing Date	May 19, 2003
First Named Inventor	Ole K. Nilssen
Examiner Name	Michael Rutland Wallis
Art Unit	2835
Attorney Docket No.	

METHOD OF PAYMENT (check all that apply)

☑ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	Fee ($)	Small Entity Fee ($)	Fee ($)	Small Entity Fee ($)	Fee ($)	Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims _____ - 20 or HP = _____ x Fee ($) _____ = Fee Paid ($) _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims _____ - 3 or HP = _____ x Fee ($) _____ = Fee Paid ($) _____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims Fee ($) _____ Fee Paid ($) _____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets _____ - 100 = _____ Extra Sheets / 50 = _____ Number of each additional 50 or fraction thereof (round up to a whole number) x Fee ($) _____ = Fee Paid ($) _____

4. OTHER FEE(S) Fees Paid ($)

Non-English Specification, $130 fee (no small entity discount) _____

Other (e.g., late filing surcharge): Petition for Revival $1,500

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	Telephone (847) 658-5615
Name (Print/Type)	Ole K. Nilssen Ole K. Nilssen		Date 6-22-06

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

The PTO did not receive the following listed item(s) _____

UNITED STATES PATENT AND TRADEMARK OFFICE

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OLE K. NILSSEN
408 CAESAR DRIVE
BARRINGTON, IL 60010

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MAY 0 4 2007

OFFICE OF PETITIONS

In re Application of Ole K. Nilssen Application No. 10/440,527 Filed: May 19, 2003 Attorney Docket No. None	: : : : :	ON PETITION

This is a decision on the renewed petition, filed January 8, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to the final Office action mailed November 25, 2005. On June 27, 2006 a petition under 37 CFR 1.137(b) was filed; however, the petition was dismissed by a decision mailed December 20, 2006. In response, on January 8, 2007, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 2835 for appropriate action by the Examiner in the normal course of business on the amendment received January 8, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 3

LADAS & PARRY
224 SOUTH MICHIGAN AVENUE
CHICAGO, IL 60604-2507

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OCT 28 2003

OFFICE OF PETITIONS

In re Application of
Tseng
Application No. 10/440,546
Filed: May 16, 2003
Attorney Docket No. CU-3239

ON PETITION

This decision concerns the October 15, 2003 "Request/Petition for Corrected Filing Date & Corrected Filing Receipt" which is being properly treated as a petition under 37 CFR 1.10(d).

The petition is **GRANTED**.

The petition requests a filing date of May 16, 2003 rather than the presently accorded filing date of May 15, 2003, on the basis that the application was deposited on May 16, 2003 in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" service ("Express Mail") pursuant to the requirements of 37 CFR 1.10.

In support, the petition is accompanied by a copy of an "Express Mail" mailing label bearing the number "EV327046596US" and a May 15, 2003 USPTO "date-in." The same label number (327046596) also appears on the application transmittal that itemizes the application papers being deposited. The Office agrees with Petitioner that, according to the official USPS website www.usps.gov (Track & Confirm), the papers deposited with this mailing label was accepted by the USPS on May 16, 2003 at 3:47pm. The petition is thus granted.

No fee is required.

The application is being returned to the Office of Initial Patent Examination for correcting the filing date to May 16, 2003, and for mailing a corrected filing receipt reflecting this filing date. Upon completion of pre-examination, the application file will be forwarded to Technology Center 3700 for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 2 2 2006

OFFICE OF PETITIONS

TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

In re Application of	:
Michael E. Fein et al	: DECISION ON PETITION
Application No. 10/440,560	: UNDER 37 CFR 1.137(b)
Filed: May 16, 2003	:
Attorney Docket No. 009103-017920US	:

This is a decision on the petition under 37 CFR 1.137(b), filed January 25, 2006, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely pay the issue and publication fees on or before January 5, 2006 as required by the Notice of Allowance and Fee(s) Due, mailed October 5, 2005.

The petition satisfies the requirements for a grantable petition in that the reply in the form of payment of the $1,400 issue fee and $300 publication fee; the petition fee of $1,500; and the required statement of unintentional delay have been submitted. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. If appropriate, a change of address (or the proper power of attorney documents) 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 above-noted address of record.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Michael G. Fletcher
P O Box 692289
Houston, TX 77269-2289

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/8/06

TO SPE OF : ART UNIT 2824

SUBJECT : Request for Certificate of Correction for Appl. No.: 10440575 Patent No.: 6839265

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: OK - Son Dinh 5/9/06

RICHARD ELMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

5/9/06 2824
SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/440,592	05/19/2003	Jason J. Bier	BGS-34738	9430

22202 7590 04/24/2009
WHYTE HIRSCHBOECK DUDEK S C
INTELLECTUAL PROPERTY DEPARTMENT
555 EAST WELLS STREET, SUITE 1900
MILWAUKEE, WI 53202

EXAMINER
ALIE, GHASSEM

ART UNIT	PAPER NUMBER
3724	

MAIL DATE	DELIVERY MODE
04/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WHYTE HIRSCHBOECK DUDEK S C
INTELLECTUAL PROPERTY DEPARTMENT
555 EAST WELLS STREET, SUITE 1900
MILWAUKEE WI 53202

4/24/09

In re Application of:
BIER, JASON J. et al
Serial No. 10/440,592
Filed: May 19, 2003
Docket: BGS-34738
Title: COLLAR STAY PUNCH, STORAGE DEVICE AND METHOD

DECISION ON PETITION
UNDER 37 CFR § 1.144

This is a decision on the petition filed January 21, 2009 under 37 CFR § 1.181 requesting issuance of Notice of Allowance because the Board of Appeals has reversed the examiner's rejection. The examiner must allow the case in accordance with MPEP § 1214.04.

The petition is dismissed as moot.

The record shows on April 14, 2009, the application was allowed. In view of the examiner's allowance of the application, decision on the petition is moot and subject to dismissal.

There is no fee for a petition under 37 CFR § 1.181. Therefore, no fee was charged to the petitioner's deposit account.

PETITION DISMISSED.

Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

Robert Olszewski, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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WHYTE HIRSCHBOECK DUDEK S C
INTELLECTUAL PROPERTY DEPARTMENT
555 EAST WELLS STREET, SUITE 1900
MILWAUKEE, WI 53202

Mail Date: 04/20/2010

Applicant	: Jason J. Bier	: DECISION ON REQUEST FOR
Patent Number	: 7578034	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/440,592	: 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 **1100** 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 No. 7,499,866 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Mark Summers et al.	Serial No.:	10/440594
Patent No.:	7,499,866	Filing Date:	May 19, 2003
Issue Date:	March 3, 2009	Docket No.:	01690.0001-US-01
Title:	IMPROVED METHOD FOR DIRECT-TO-PATIENT MARKETING AND CLINICAL TRIALS RECRUITMENT WITH OUTCOMES TRACKING AND METHOD FOR CONFIDENTIAL APPOINTMENT BOOKING		

REQUEST FOR CERTIFICATE OF CORRECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

It is requested that a Certificate of Correction be issued correcting printing errors appearing in the above-identified United States patent.

As none of the errors listed is due to Applicant's mistake, no fee is necessary in connection with this Certificate.

Issuance if the Certificate of Correction would neither expand nor contract the scope of the claims, and re-examination is not required.

Respectfully submitted,

Altera Law Group, LLC
Customer No. 22865

Date: April 28, 2009 By: _____/Michael Lasky/_____
Michael B. Lasky
Reg. No. 29,555
MBL/jsa

Changes requested in the Request for Certificate of Correction should be made.

/Vivek Koppikar/

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 7,499,866

DATED: 3/3/2009

INVENTOR(S): Mark Summers et al.

It is certified that error appears in the above-identified patent and that said Letters Patent are hereby corrected as shown below:

Please add drawings labeled as Exhibits 1-4 immediately following the last drawing labeled as FIG.18.

MAILING ADDRESS OF SENDER:
Altera Law Group, LLC
1700 U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, Minnesota 55402

PATENT NO. 7,499,866

No. of additional copies: 0

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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DAVID L. PARKER
FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVENUE
SUITE 2400
AUSTIN TX 78701

COPY MAILED

JAN 08 2009

OFFICE OF PETITIONS

In re Application of	:	
Lee et al.	:	
Application No. 10/440,636	:	DECISION ON APPLICATION
Filed: May 19, 2003	:	FOR
Atty Docket No. CLFR:224US	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed on October 17, 2007. Applications request that the determination of patent term extension of four hundred ninety-one (491) days in this application be corrected to a determination of patent term adjustment of five hundred ninety (590) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **five hundred ninety (590)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 27, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 491 days. This was based on an Office delay of 617 days reduced by an applicant delay of 126 (99+27) days. Applicants timely filed the instant application for patent term adjustment.

Applicants assert that the reduction in patent term adjustment of 99 days for the filing of a reply having an omission is incorrect. On October 16, 2006, a response to a non-final Office action was filed. On January 5, 2007, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed, stating that the amendment was considered non-compliant because Claim 11 was presented using an improper status identifier, and that the amendment filed on October 16, 2006, had not been entered.

In response, on January 23, 2007, applicants filed a reply asserting that the status indicator in Claim 11 as presented in the amendment filed on October 16, 2006, was not an improper status identifier, and requesting that the Notice of Non-Compliant Amendment be withdrawn.

Accordingly, on April 20, 2007, a final Office action was mailed, stating, in pertinent part, that the amendment filed on October 16, 2006, has been entered.

Applicants assert that the 99 days of PTA adjustment for applicant delay should be removed because the examiner agreed to enter the amendment.

As the examiner entered the amendment filed on October 16, 2006, the showing of record is that the examiner determined the amendment was not non-compliant. Accordingly, applicants should not be assessed 99 days of applicant delay in PTA.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance should be adjusted to five hundred ninety (590) days (617 days of Office delay reduced by 27 days of applicant delay).

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 issuance of the patent and applicant will be notified in the Issue Notification letter that is mailed to applicants approximately three (3) weeks prior to issue.

The $200 fee set forth in 37 CFR 1.18(e) has been received. No additional fees are required.

The application file is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Wednesday

PALM INTRANET

Date: 1/7/2009
Time: 18:41:54

PTA Calculations for Application: 10/440636			
Application Filing Date:	05/19/2003	PTO Delay (PTO):	617
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	126
Post-Issue Petitions:	0	Total PTA (days):	590
PTO Delay Adjustment:	99		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
57	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	99		
50	08/27/2007	MAIL NOTICE OF ALLOWANCE			
49	08/27/2007	MAIL EXAMINER'S AMENDMENT			
48	08/24/2007	ISSUE REVISION COMPLETED			
47	08/22/2007	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
45	08/22/2007	DOCUMENT VERIFICATION			
44	08/22/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
43	08/22/2007	EXAMINER'S AMENDMENT COMMUNICATION			
42	08/18/2007	NOTICE OF ALLOWABILITY			
39	07/12/2007	MAIL ADVISORY ACTION (PTOL - 303)			
38	07/11/2007	ADVISORY ACTION (PTOL-303)			
37	06/22/2007	DATE FORWARDED TO EXAMINER			
36	06/20/2007	AMENDMENT AFTER FINAL REJECTION			
35	04/20/2007	MAIL FINAL REJECTION (PTOL - 326)			
34	04/16/2007	FINAL REJECTION			
33	02/01/2007	DATE FORWARDED TO EXAMINER			
32	01/23/2007	RESPONSE AFTER NON-FINAL ACTION		99	29
31	01/05/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
30	10/17/2006	DATE FORWARDED TO EXAMINER			
29.1	10/16/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
29	10/16/2006	RESPONSE AFTER NON-FINAL ACTION			
28	07/18/2006	MAIL NON-FINAL REJECTION			
27	07/10/2006	NON-FINAL REJECTION			

26	04/18/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	04/27/2006	DATE FORWARDED TO EXAMINER			
24	04/18/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
23	03/28/2006	MAIL RESTRICTION REQUIREMENT	617		-1
22	03/20/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
21	04/18/2005	REFERENCE CAPTURE ON IDS			
20.7	04/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	04/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	01/24/2005	CORRESPONDENCE ADDRESS CHANGE			
18	01/25/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
17	02/21/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	02/21/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	11/19/2003	PRELIMINARY AMENDMENT			
14	09/25/2003	PRELIMINARY AMENDMENT			
13	12/11/2003	APPLICATION DISPATCHED FROM OIPE			
12	12/12/2003	APPLICATION IS NOW COMPLETE			
11	11/19/2003	ADDITIONAL APPLICATION FILING FEES		27	5
10	11/19/2003	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
9	11/07/2003	CORRECTED PAPER			
8	05/19/2003	DRAWING PRELIMINARY AMENDMENT			
7	09/25/2003	ADDITIONAL APPLICATION FILING FEES			
6	07/23/2003	PRE-EXAM OFFICE ACTION WITHDRAWN			
5	07/23/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	06/04/2003	CLEARED BY L&R (LARS)			
3	06/04/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/31/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/19/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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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INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON PA
200 SOUTH SIXTH STREET
SUITE 4000
MINNEAPOLIS, MN 55402

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DEC 0 5 2006
OFFICE OF PETITIONS

In re Application of	:
John T. Vaughan	:
Application No. 10/440,641	: DECISION GRANTING PETITION
Filed: May 19, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 46680.10.2	:

This is a decision on the petition, filed December 1, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 10, 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 2859 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\Dec10\440641.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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BAYER MATERIAL SCIENCE LLC
100 BAYER ROAD
PITTSBURGH, PA 15205

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MAR 14 2007

OFFICE OF PETITIONS

In re Application of	:	
Eduard Mayer et al	:	
Application No. 10/440,654	:	ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. PO7651/LeA36,030	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 2, 2006, to revive the above-identified application.

The petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being forwarded to Technology Center AU 1711 for further processing.

Irvin Dingle
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
www.uspto.gov

WILLIAMS, MORGAN & AMERSON, P.C.
10333 RICHMOND, SUITE 1100
HOUSTON TX 77042

AUG 01 2005

In re Application of: Kammler et al	:	
Application No. 10/440,656	:	Decision on Petition
Filed: May 19, 2003	:	
Attorney Docket No.	:	
2000.104100/DE0317	:	

This is a decision on the petition filed under 37 C.F.R. § 1.144 on May 27, 2005 to withdraw the restriction requirement of claims 1-31.

The petition is GRANTED.

Title 37 C.F.R. § 1.144 sets forth the requirements for a Petition from the requirement for restriction.

> § 1.144 Petition from requirement for restriction.
> After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

The application file will be forwarded to the Technical Support staff for Technology Center 2800. The election restrictions mailed on April 12, 2004 and November 29,2004 will be vacated as well as the non-responsive office actions mailed on August 25, 2004 and March 24,2005. Then, the application will be forwarded to the examiner for continued prosecution on the merits.

Janice A Falcone
for Sharon Gibson, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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United States Patent and Trademark Office
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MERCHANT & GOULD CHEVRON PHILLIPS
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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OFFICE OF PETITIONS

In re Application of McDaniel et al. :
Application No. 10/440,666 : Decision on Petition
Filing Date: May 19, 2003 :
Attorney Docket No. 60293.0005USD1 :

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 above-identified application became abandoned for failure to reply in a timely and proper manner to the final Office action mailed June 6, 2005, which set a shortened statutory period for reply of three (3) months.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Jeffery Arnold signed the instant petition. Arnold was not an attorney or agent of record at the time the application became abandoned. Therefore, it appears Arnold was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Arnold that the entire delay was unintentional is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[1] In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that a portion of the delay 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.

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. If the entire

[1] See Changes to Patent Practice and Procedure, 62 *Fed. Reg.* at 53160 and 53178; 1203 *Off. Gaz. Pat. Office* at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

delay from the date of abandonment until the date the petition was filed was not unintentional, petitioner must notify the Office.

Technology Center Art Unit 1755 will be informed of the instant decision and the application will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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THOMAS L. TAROLLI
TAROLLI SUNDHEIM COVELL & TUMMINO
526 SUPERIOR AVENUE, SUITE 1111
CLEVELAND, OH 44114-1400

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JUL 2 8 2005

OFFICE OF PETITIONS

In re Patent No. 6,834,594 :
Issue Date: December 28, 2004 :
Application No. 10/440,671 :
Filed: May 19, 2003 :
Attorney Docket No. TRW(AS)6590 :

ON PETITION

This is a decision on the petition, filed March 24, 2005, which is being treated as a petition under 37 CFR 3.81(b)[1] to accept the correction of the assignee on the front page of the above-identified patent.

The petition is **dismissed**.

Petitioner requests issuance of a certificate of correction in the name of "TRW Airbag Systems GmbH." However, Office PALM computer database assignment records reflect that an assignment in the name of the assignee sought by the certificate of correction was recorded as TRW Airbag Systems GmbH & Co. KG. Accordingly, if reconsideration of this decision is requested, petitioner must supply either the reel and frame number where the recorded assignment appears or supply a copy of the recorded assignment. If the assignment was not recorded, or submitted for recordation, prior to issuance of this patent, a certificate of correction would not be in order. Note MPEP Section 307.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building
401 Dulany Street

---

[1] *See* Official Gazette of June 22, 2004

Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries 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

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

TAROLLI, SUNDHEIM, COVELL, TUMMINO & SZABO, L.L.P.
1111 LEADER BLDG.
526 SUPERIOR AVENUE
CLEVELAND, OH 44114-1400

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OCT 08 2008

OFFICE OF PETITIONS

In re Patent No. 6,834,594	:	
Issue Date: December 28, 2004	:	
Application No. 10/440,671	:	ON PETITION
Filed: May 19, 2003	:	
Patentee(s): Gunter Herrmann, et. al.	:	

This is a decision on the renewed request under 37 CFR 3.81 filed on September 18, 2006, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **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.

Finance records show that petitioner is entitled to a refund of $500, which consists of duplicate payments of $100 for Certificate of Correction and $130 for the processing fee filed on September 18, 2006. Also, the refund also consists of an overpayment of $270 for the instant request filed on March 24, 2005.

Since the address given in the request differs from the address of record, a courtesy of this decision is being mailed to the address given in the request.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. Inquiries regarding the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: TAROLLI, SUNDHEIM, COVELL & TUMMINO, L.L.P.
1300 East Ninth Street, Suite 1700
CLEVELAND, OH 44114

UNITED STATES PATENT AND TRADEMARK OFFICE

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HARNESS, DICKEY & PIERCE PLC
P. O. BOX 828
BLOOMFIELD HILLS, MI 48303

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OFFICE OF PETITIONS

In re Application of	:
Hidekazu Arase et al	:
Application No. 10/440,699	: DECISION GRANTING PETITION
Filed: May 19, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 5077-000157	:

This is a decision on the petition, filed March 7, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 12, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 1755 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment.*

UNITED STATES PATENT AND TRADEMARK OFFICE

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VIVIANA AMZEL
NATH & ASSOCIATES
112 South West Street
Alexandria VA 22314

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OFFICE OF PETITIONS

In re Application of :

AROUH et al. :
Application No. 10/440,711 :
Filed: May 19, 2003 :
Attorney Docket No. PS 0002DIV2 (90214) :

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 July 13, 2005.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request cannot be approved because the person requesting withdrawal on behalf of herself and all the practitioners of record was not been appointed as power of attorney in the Revocation and Power of Attorney filed on March 24, 2004. While a Change of Address/Power of Attorney in the file indicates that the power of attorney was set to Customer Number 20529 on November 29, 2004, an Official Gazette notice, 1272 OG 24 (July 1, 2003), states that, "effective immediately, the ability to use a "batch update" to change powers of attorney is discontinued." Thus to the extent that the Power of Attorney made by the Change of Address/Power of Attorney was effective, the change from the practitioners listed on the power of attorney of March 24, 2004 to those practitioners associated with Customer Number 20529 has been vacated.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant or practitioner associated with the Revocation and Power of Attorney filed on March 24, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272- 4787.

Denise Pother
Petitions Examiner
Office of Petitions

cc: Mr. Cornelius Diamond, CEO
PREDICTION SCIENCES
9360 Town Centre Drive
La Jolla, CA 92122

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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VIVIANA AMZEL
NATH & ASSOCIATES
112 SOUTH WEST STREET
ALEXANDRIA, VA 22314

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APR 2 5 2006

OFFICE OF PETITIONS

In re Application of
AROUH, SCOTT et al
Application No. 10/440,713
Filed: May 19, 2003
Attorney Docket No. PS 0002DIV2

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 July 13, 2005.

The request is **NOT APPROVED**.

A review of the file record indicates that attorney signing the request, Viviana Amzel #30930, does not have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.136(b) is not applicable.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

There is an outstanding Office action mailed November 29, 2005 that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to Amelia Au at 571-272- 7414.

Amelia Au
Petitions Examiner
Office of Petitions

cc: Mr. Cornelius Diamond, CEO
PREDICTION SCIENCES
9360 TOWN CENTRE DRIVE
LA JOLLA, CA 92122

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

JAY A. LENKER
408 PANORAMA DRIVE
LAGUNA BEACH CA 92651

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OFFICE OF PETITIONS

In re Application of	:	
Jay A. Lenker	:	
Application No. 10/440,742	:	DECISION ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. IVUS.004A	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 25, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an 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 June 19, 2007, is accepted as having been unintentionally delayed.

The extension of time fee submitted on September 18, 2008 is being refunded as requested.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3737 for appropriate action by the Examiner in the normal course of business on the reply received August 18, 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
www.uspto.gov

Date: October 12, 2006

Patent No.: 7,071,721 B2
Issued : July 4, 2006
Inventor : Furukawa
Title : **DEVICE AND METHOD FOR ELECTRONIC DEVICE TEST**
Docket No: 02008/108001

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 provision of Rule 1.322 or 1.323.

Respecting the alleged error, in the Assignee, or Firm is printed solely in accordance with the PTOL-85b (Issue Fee Transmittal), submitted at the time of payment of the base issue fee. Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 or 255 and the Code of Federal Regulation (C.F.R.) 1.322 or 1.323.

In view of the foregoing your request is hereby denied.

Any petition under 37 CFR 1.183 should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or FAX number.

By Mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Washington, D.C. 22313-1450

By Fax: (571) 273-8300
Attn.: Office of Petitions

If the Petition under 37 CFR 1.182 (required fee currently $130), is filed and granted, the Patentee would be entitled to certificate of correction under 37 CFR 1.323 (required fee currently 100).

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch. Any response must be filed within a four week period.

Elisha Evans
Newman Cecelia
Decisions & Certificates
of Correction Branch
(703) 308-9390

OSHA LIANG L.L.P.
1221 MCKINNEY STREET
SUITE 2800
HOUSTON TX 77010

CBN /eme

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070604

DATE : June 4, 2007

TO SPE OF : ART UNIT

SUBJECT : Request for Certificate of Correction on Patent No.: 10/440,754

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:

Ha Nguyen

SPE: Ha T. Nguyen **Art Unit** 2829

EME

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070604

DATE : June 4, 2007

TO SPE OF : ART UNIT

SUBJECT : Request for Certificate of Correction on Patent No.: 10/440,754

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:

Ha Nguyen

SPE: Ha T. Nguyen **Art Unit** 2829

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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OSHA LIANG LLP
1221 MCKINNEY STREET
SUITE 2800
HOUSTON, TX 77010

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OCT 04 2007

OFFICE OF PETITIONS

In re Application of	:	
Yasuo Furukawa	:	
Application No. 10/440,754	:	DECISION ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. 02008.108001	:	

This is a decision on the petition filed November 29, 2006, which is being treated as a petition under 37 CFR 1.182, to add the firm's name by way of Certificate of Correction.

The petition is **GRANTED**.

As authorized, the $400 fee for the petition under 37 CFR 1.182 is being assessed to petitioner's deposit account. The $130 petition fee received on November 29, 2006 is being credit to petitioner's credit card.

Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.

The matter is being referred to Certificate for Correction Branch for issuance of a Certificate of Correction.

Irvin Dingle
Petition Examiner
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

7/21/03

Stephen B Salai Esq
Harter Secrest and Emery LLP
1600 Bausch and Lomb Place
Rochester NY 14604

Dear Applicant:

The Box PGPub replacement drawings for application number 10/440,758 received on 6/19/03 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080512

DATE : February 05, 2007

TO SPE OF : ART UNIT 2628

SUBJECT : Request for Certificate of Correction on Patent No.: 7,081,900

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: /Xiao M. Wu/ Art Unit 2628

UNITED STATES
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TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

7/21/03

Weingarten Schurgin Gagnebin and Lebovici LLP
Ten Post Office Square
Boston MA 02109

Dear Applicant:

The Box PGPub replacement drawings for application number 10/440,784 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
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Signature of Reviewer, Office of Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

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FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

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APR 12 2010

OFFICE OF PETITIONS

In re Application of	:	
Vitetta et al.	:	
Application No. 10/440,796	:	DECISION ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. UTSD:603USC1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 17, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3206.

This matter is being referred to Technology Center AU 1656 for appropriate action by the Examiner in the normal course of business on the reply received

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
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SEP 12 2006
OFFICE OF PETITIONS

ARIAD PHARMACEUTICALS, INC.
ARIAD GENE THERPEUTICS, INC.
26 LANDSDOWNE ST.
CAMBRIDGE MA 02139

In re Application of
Rivera et al.
Application No. 10/440,799
Filed: May 19, 2003
Attorney Docket No. 383B USC1
Title of Invention:Materials and Methods Involving Conditional Retention Domains

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) filed July 3, 2006 to revive the above-identified application.

The petition to revive under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR § 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR § 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely submit a response to the October 21, 2005 Notice of Non-Responsive Amendment hereinafter "Notice" which indicated the May 6, 2005 amendment was not fully responsive. The Notice set a one month period of reply. Extensions of time pursuant to 37 CFR 1.136(a) were not obtained. Accordingly, this application became abandoned on November 22, 2005. A Notice of Abandonment was mailed on June 14, 2006.

Petitioner contends the Notice was not received and thus Petitioner was unable to

reply.

PETITION TO REVIVE UNDER 37 CFR 1.137(a)

A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply,[1]

(2) the petition fee,

(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and

(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks items (1) and (3).

As to item (1), petitioner has failed to provide a reply to the Notice of Informal or Non Responsive Amendment.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Commissioner to have been "avoidable." See, 37 CFR 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.

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[1] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[2] For example, if a two month period for reply was set in the nonreceived Notice of Missing Parts , a copy of the docket report showing all replies docketed for a date two months from the mail date of the nonreceived Notice of Missing Parts must be submitted as documentary proof of nonreceipt of the Notice of Missing Parts. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Notice may have been lost after receipt rather than a conclusion that the Notice was lost in the mail.

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).

For petitioner's convenience a copy of the October 21, 2005 is enclosed.

Alternative Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

The filing of a petition under 37 C.F.R. § 1.137(b) cannot be intentionally delayed, and therefore, must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned

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[2] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

until the filing of the petition to revive under 37 C.F.R. § 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 C.F.R. § 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
ATLANTA GA 30309

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OCT 12 2007

OFFICE OF PETITIONS

In re Application of :
Budaragin, et al. :
Application No. 10/440,802 : ON PETITION
Filed: May 19, 2003 :
Attorney Docket No. R3990/285943 :
For: COATINGS FOR METAL CASTING PARTS

This is a decision on the petition under 37 CFR 1.137(b), filed on July 11, 2007, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to timely and properly respond to the final Office action mailed February 13, 2006, which set an extendable three month period for reply. Applicants filed a Notice of Appeal and a three month extension of time on August 17, 2006 (certificate of mailing date/facsimile transmission date August 14, 2006). No follow-up to the Notice of Appeal was timely received. Therefore, the application became abandoned after two months of the filing of the Notice of Appeal on October 15, 2006.

Applicants have submitted a RCE and required $395.00 fee and amendment in reply to the February 13, 2006 final Office action, a proper able statement of the unintentional nature of the delay in responding to the February 13, 2006 final Office action, and the $750.00 petition fee. Therefore, the petition is granted.

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 $795.00 extension of time submitted on February 14, 2007 was submitted after the expiration of the maximum obtainable extendable period for reply, this fee is unnecessary and will be credited to petitioners' deposit account.

The RCE filed on February 14, 2007 was submitted after the application was abandoned. Therefore, the RCE fee of $395.00 will be refunded to petitioners' credit card.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

After the mailing of this decision the application will be forwarded to Technology Center AU 1792 for consideration of the RCE and amendment filed on July 11, 2007.

Telephone inquiries pertaining to this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: J. CLINTON WIMBISH
KILPATRICK STOCKTON, SUITE 2500
214 N. TRYON STREET
CHARLOTTE, NC 28202

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JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA GA 30309

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APR 12 2010

OFFICE OF PETITIONS

In re Application of	:	
Budaragin et al.	:	
Application No. 10/440,802	:	
Filed: May 19, 2003	:	ON APPLICATION FOR
Attorney Docket No.	:	PATENT TERM ADJUSTMENT
R3990/285943	:	
Title: Coatings For Metal	:	
Casting Parts	:	

This is in response to the "PETITION REGARDING PATENT TERM (PTA) INDICATED IN NOTICE OF ALLOWANCE" filed January 25, 2010. This petition is properly treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is one hundred seven (107) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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 cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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 matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

Anthony Knight
Director
Office of Petitions

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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

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OFFICE OF PETITIONS

In re Application of McCall et al. :
Application No. 10/440,814 : Decision on Petition
Filing Date: May 19, 2003 :
Attorney Docket No. TI-31703 :

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 above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 16, 2005, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on March 17, 2006. A Notice of Abandonment was mailed on August 2, 2006.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 2618 will be informed of the instant decision and the application will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

In re Application of :
McCall et al. :
Application No. 10/440,814 : DECISION ON PETITION
Filed: May 19, 2003 :
Attorney Docket No. TI-31703 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 26, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a response to a non-final Office Action, which was mailed on November 20, 2007. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on February 21, 2008. A Notice of Abandonment was mailed on July 7, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment (2) the petition fee of $1540, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the present petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. 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 the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 2618 for appropriate action by the Examiner in the normal course of business on the reply received.

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: Charles C. Claunch
Chowdhury & Georgakis
P.O. Box 17299
Sugar Land, Texas 77496

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Paper No. 4

MYERS BIGEL SIBLEY & SAJOVEC
P O BOX 37428
RALEIGH, NC 27627

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SEP 17 2003

OFFICE OF PETITIONS

In re Application of
Hakan Quilisch et al
Application No. 10/440,819
Filed: May 19, 2003
Attorney Docket No. 9342-75

DECISION GRANTING PETITION
UNDER 37 CFR 1.10(c)

This is a decision on the petition under 37 CFR 1.10(c), filed July 28, 2003, requesting that the above-identified application be accorded a filing date of May 19, 2003, rather than the presently accorded date of May 20, 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 19, 2003 pursuant to 37 CFR 1.10. In support, applicants have submitted a copy of Express Mail label No. EV 193585340 US showing a stamped postal date of May 19, 2003. The same Express Mail receipt number was placed on the Certificate of Mailing of the original patent application transmittal letter.

Further, an independent search was made of the USPS Express Mail Track and Confirm records which resulted in a finding that the package in question was in fact accepted on May 19, 2003 at the Raleigh, NC USPS. Therefore, in view of all the evidence, it is concluded that the application was deposited in Express Mail service on May 19, 2003. Accordingly, the instant application is entitled to a filing date of May 19, 2003, and has been so accorded.

The petition is **granted**.

Telephone inquiries concerning this matter may be directed to Frances Hicks at (703) 305-8680.

This application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of May 19, 2003.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Robert H. Kelly
Scheef & Stone, LLP
Suite 1400
5956 Sherry Lane
Dallas TX 75225

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APR 2 5 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Jani Lainema, et al.
Application No. 10/440,841
Filed: May 19, 2003
For: **VIDEO CODING SYSTEM**

DECISION ON PETITION TO WITHDRAW FROM ISSUE

This is a decision on the petition to withdraw the above-identified application from issue pursuant to the provisions of 37 CFR 1.313(a), filed December 5, 2003.

A review of the application file reveals that a Notice of Allowance and a Notice of Allowability were mailed for the above-identified application on September 9, 2003. However, the review also reveals a crossing in the mail with respect to an Applicant submission of a preliminary amendment, filed July 22, 2003.

MPEP § 1.313 Withdrawal from issue, states in part:

> (a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary. A petition under this section is not required if a request for continued examination under § 1.114 is filed prior to payment of the issue fee. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application. [emphasis added]

Accordingly, given that the preliminary amendment was filed prior to the Notice of Allowance and Issue fee Due communication and prior to the payment of the Issue fee, the application file is WITHDRAWN FROM ISSUE.

The application will be forwarded to Technology Center's technical support staff for processing the preliminary amendment. From there, the application will be forwarded to the examiner for further action as appropriate.

Reinhard Eisenzopf

Reinhard Eisenzopf, Director (Acting)
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 3

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

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NOV 25 2003

OFFICE OF PETITIONS

In re Application of
Daniel P. Homiller
Application No. 10/440,910
Filed: 27 June, 2001
Attorney Docket No. F-7040

DECISION GRANTING PETITION

This is a decision on the "Petition to Commissioner Under 37 CFR 1.10 (c), which is treated under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of May 19, 2003, rather than the presently accorded filing date of May 20, 2003.

Petitioner alleges that the application was deposited in Express Mail service on May 19, 2003. Amongst the evidence provided is the Express Mail Customer label with a USPS postmark of May 19, 2003 and a copy of the USPS Track and Confirm information from the USPS website that indicates express mail package EV193585353US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file) was accepted in Raleigh, NC on May 19, 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 19, 2003 and therein, the application is entitled to a filing date of May 19, 2003.

It should be noted however that this application is being treated as a petition under 37 CFR 1.10(d) and not 37 CFR 1.10(c) because the copy of the express mail label does not in fact indicate a "date-in" of May 19, 2003. In fact, the "date-in" section is blank and thus, the package was received by the USPTO on May 20, 2003 and properly given a filing date of May 20, 2003. The error in the filing date was not occasioned by the USPTO and instead it was postal service error. However, in view of the evidence presented, (postmark and track and confirm details) the petition is granted.

No fees are due and none will be charged.

The application is being returned to Office of Initial Patent Examination for reprocessing with a filing date of May 19, 2003, not May 20, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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MYERS BIGEL SIBLEY & SAJOVEC, P.A
PO BOX 37428
RALEIGH NC 27627

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OFFICE OF PETITIONS

In re Application of:	:	
HOMILLER, Daniel P.	:	
Application No.: 10/440,910	:	DECISION APPROVING
Filed: May 19, 2003	:	WITHDRAWAL OF ATTORNEY
Attorney Docket No.: 9314-30	:	

This is a decision on the Request to Withdraw as Attorney/Agent of Record under 37 CFR § 1.36, filed October 2, 2008.

The Request is **APPROVED**.

Debra K. Stephens requests that she alone be withdrawn as an attorney under 37 CFR § 1.36, pursuant to the reason set forth under 37 CFR § 10.40(b)(2), because of her current employment by the United States Patent and Trademark Office. Since the Request satisfies all of the requirements for withdrawal, it is appropriate to approve the Request and withdraw only Ms. Stephens as an attorney of record.

All future communications from the Office will continue to be directed to the above-identified correspondence address.

A courtesy copy of this decision is being mailed to Ms. Stephens at the address identified in the Request.

Telephone inquiries relating to this decision should be directed Brian W. Brown at (571) 272-5338.

Brian W. Brown
Petitions Examiner
Office of Petitions

Cc: Debra K. Stephens
301 Edgemore Avenue
Cary, NC 27519

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OFFICE OF PETITIONS

DAY PITNEY LLP
7 TIMES SQUARE
NEW YORK NY 10036-7311

In re Application of	:	
Mitsuhiro Kageyama	:	
Application No. 10/440,913	:	ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. 4777-23	:	

This is a decision on the petition filed on August 20, 2007, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to timely file a proper reply to the final Office action mailed on January 18, 2007. This Office action set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on April 19, 2007. The mailing of this decision precedes the mailing of a Notice of Abandonment.

With the instant petition, applicant paid the petition fee, submitted the required reply in the form of an RCE, and made the proper statement of unintentional delay.

The matter is being forwarded to Group Art Unit 2157 for consideration of the RCE, filed August 20, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/440,918			

EXAMINER	
A/Sumiri	
ART UNIT	PAPER NUMBER
3642	

DATE MAILED:

This is a communication from the examiner in charge of your application
COMMISSIONER OF PATENTS AND TRADEMARKS

The petition filed November 8, 2004 under 37 CFR §1.97(d)(2)(ii) for consideration of an information disclosure statement filed after allowance has been:

[X] GRANTED.

[ ] DENIED.

The petition lacks:

[ ] The required fee under 37 CFR §§1.97(d)(2)(iii) and 1.17(i)(1).

[ ] A proper certification as specified in 37 CFR §§1.97(d)(2)(i) and 1.97(e)

The information disclosure statement has been placed of record in the file but will not be considered by the examiner.

Thomas H. Tarcza

Thomas H. Tarcza
SPE Art Unit 3662

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MAIL

SEP 22 2008

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of
MACINNIS, ALEXANDER G., et al.
Application No. 10/440,938
Filed: May 19, 2003
For: **METHOD FOR DEBLOCKING FIELD-FRAME VIDEO**

DECISION
ON PETITION

This is a decision on the petition filed June 30, 2008, pursuant to 37 CFR § 1.181, requesting that ground of rejection set forth in Examiner's Answer on Appeal be designated as a new ground.

PERTINENT BACKGROUND

This application was filed May 19, 2003.

A first Office action was issued September 22, 2006 rejecting claims 1-24 under 35 USC 102(e) as being anticipated by Kadono et al.

A response to the first Office action was timely filed and received in the Patent and Trademark Office (PTO) on December 22, 2006. Applicant filed an amendment deleting claims 18-24 while leaving claims 1-17 unchanged. Applicant argued the application has priority back to the provisional application SN 60/324,300 filed September 24, 2001. Accordingly, the filing date of September 24, 2001 is earlier than the earliest possible filing date of the Kadono et al reference which is the filing date of the provisional applications 60/333,763 and 333,767, November 29, 2001.

A final Office action was issued on March 13, 2007 rejecting claims 1-17 under 102(e) as being anticipated by Kadono et al, as was set forth in the Office action of 9/22/06. Examiner argued the claimed subject matter of the current application must derive its entire support from the specification as originally filed in the parent application 10/246,977 and notes this is not the case.

On May 14, 2007, applicant filed an after final response and again argued Kadono et al is not prior art under 102(e) as evidenced by applicants claim to priority to provisional application 60/324,300 filed September 24, 2001.

On May 23, 2007, the examiner mailed an Advisory Action stating the request for reconsideration does not place application in condition for allowance because of the reasons as stated in the Final Office action of 3/13/07.

A Notice of Appeal was filed June 13, 2007. Subsequently, an Appeal Brief was filed November 24, 2007 and a revised Appeal Brief was filed February 4, 2008.

An Examiner's Answer was issued on April 30, 2008 stating:

"The following ground(s) of rejection are applicable to the appealed claims:
1. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Kadono et al., (hereinafter referred to as "Kadono")."

A miscellaneous communication by the examiner was issued on June 2, 2008 clarifying the rejection is only directed to claims 1-17.

Petitioner seeks relief by filing a petition June 30, 2008 under 37 CFR 1.181 requesting to designate the grounds of rejection set forth in the Answer on Appeal be designated as a new ground of rejection. Petitioner alleges:

> *"In the Answer, the sole argument that the instant application is not entitled to the benefit of the filing date of the provisional application (U.S. Provisional Application 60/324,300) is that the provisional application does not support the claimed limitation "macroblock". Examiner presents this argument for the first time."*

REGULATIONS AND PRACTICE

MPEP 1201 states:

> *The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a *>substantive< nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of prior art or **>other patentability issues<, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute >(35 U.S.C. 134)<.*

MPEP 1207.03 states in part, under part III. SITUATIONS THAT ARE NOT CONSIDERED AS NEW GROUNDS OF REJECTION<

"There is no new ground of rejection when the basic thrust of the rejection remains the same such that an appellant has been given a fair opportunity to react to the rejection. See In re Kronig, 539 F.2d 1300, 1302-03, 190 USPQ 425, 426-27 (CCPA 1976). Where the statutory basis for the rejection remains the same, and the evidence relied upon in support of the rejection remains the same, a change in the discussion of, or rationale in support of, the rejection does not necessarily constitute a new ground of rejection. Id. at 1303, 190 USPQ at 427 (reliance upon fewer references in affirming a rejection under

35 U.S.C. 103 does not constitute a new ground of rejection)." (emphasis added)

OPINION

Since the ground of rejection stated in the Examiner's Answer is the same as the ground of rejection leading up to and including the Final rejection, there is no new ground of rejection. The fact that the statutory basis for the rejection remains the same and the evidence relied upon in support of the rejection remains the same, the basic thrust of the rejection clearly remains the same such that appellant has been given a fair opportunity to react to the rejection. A change in the discussion of or rationale in support of the rejection does not necessarily constitute a new ground of rejection. Questions raised by the appellant concerning examiner's Response to Argument in section 10 pages 6-11 of the Examiner's Answer relate to the merits of the rejection and are thus appealable matters not for petition.

Accordingly, the petition requesting that ground of rejection set forth in Examiner's Answer on Appeal be designated as a new ground is **DENIED**.

Any request for reconsideration must be filed within two months form the date of this decision. The application is being forwarded to the Board of Patent Appeal and Interferences for decision on the Appeal.

Valencia Martin-Wallace, Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Andrew R. Basile, Sr.
YOUNG 7 BASILE, P.C.
3001 West Big Beaver Road
Suite 624
Troy, MI 48084-3107

NOV 23 2005

In re Application of:	:	
Kenneth Becker	:	DECISION ON REQUEST TO WITHDRAW
Serial No.: 10/440,954	:	FROM RECORD
Filed: May 16, 2003	:	
Attorney Docket No.: **SNB-101-A**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed September 19, 2005.

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 Butzel Long was filed on October 11, 2005. As such, the power of attorney for the attorneys and agents requesting withdrawal has already been revoked. Accordingly, the present request is moot, and must be dismissed.

All future communications form the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Clayton E. LaBalle, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: BUTZEL LONG
DOCKETING DEPARTMENT
100 Bloomfield Hills Parkway
Suite 200
Bloomfield Hills MI 48304

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

Mail Date: 06/14/2010

Applicant	: David Stefanchik	: DECISION ON REQUEST FOR
Patent Number	: 7615005	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/440,957	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/16/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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NOV 16 2004

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OFFICE OF THE DIRECTOR
TC 3600

Decker, Jones, McMakin, McClane, Hall & Bates, PC
Burnett Plaza 2000
801 Cherry Street, Unit #46
Fort Worth, TX 76102-6836

In re application of :
E. David Hicks et al. :
Application No. 10/440,987 :
Filed: May 19, 2003 :
For: CART WHEEL WITH BEARING COMPONENTS

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed September 22, 2004 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(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 September 22, 2004 meets all of the requirements above and, therefore, the petition is **GRANTED**.

With regards to element 2(C) above, an Information Disclosure Statement was filed on May 19, 2003.

The examiner is directed (1) to make an interference search for possible interfering applications; (2) to promptly examine this application out of turn; and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference and appeal, if any, only if petitioner makes a prompt *bona fide* effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/snm: 11/16/04

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www.uspto.gov

KEN C. LAMBIE
2507 S. CRESTA LN.
GREENACRES, WA 99016

In re Application of	:	**COPY MAILED**
Ken C. Lambie	:	
Application No. 10/440,989	:	DEC 0 8 2005
Filed: May 19, 2003	:	
Title of Invention: FOLDING	:	**OFFICE OF PETITIONS**
TAILGATE MOUNTED STEP ASSEMBLY	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unavoidably, filed November 22, 2005.

The 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 Non-compliant Amendment, mailed May 27, 2005. The Notice set a one (1) month period for reply. No response having been received, the application became abandoned on June 28, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

Applicant files the instant petition wherein Applicant avers that he did not receive the Notice.

Applicant is advised that an allegation that an Office action was not received may form the basis for revival of an application based upon unavoidable abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.

2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

Accordingly, Applicant's assertion, that the Office action was not received, is insufficient to justify granting of the petition. Applicant must also provide a copy of the docket record (or file jacket) where the non-received Office action would have been entered had it been received and docketed.

As such, the petition is dismissed.

Applicant should file a Request for Reconsideration of Petition and include the necessary copies of documents.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

KEN C. LAMBIE
2507 S. CRESTA LN.
GREENACRES, WA 99016

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FEB 08 2006
OFFICE OF PETITIONS

In re Application of :
Ken C. Lambie :
Application No. 10/440,989 :
Filed: May 19, 2003 :
Title of Invention: FOLDING :
TAILGATE MOUNTED STEP ASSEMBLY :

This is a decision on the Renewed Petition under 37 CFR § 1.137, filed December 19, 2005, to revive an unavoidably abandoned application. The petition is properly treated under 37 CFR 1.137(a).

The Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Non-compliant Amendment ("Notice"), mailed May 27, 2005. The Notice set a one (1) month period for reply. No response having been received, the application became abandoned on June 28, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

With the instant petition, Petitioner has provided the necessary statements and copies of the docket record where the non-received Notice would have been entered had it been received and docketed. Petitioner has demonstrated by a preponderance of the evidence that the Notice was not received.

In view of the above, the petition under 37 CFR 1.137(a) is granted.

The application is being referred to technology Center 3618 for re-mailing of the May 27, 2005 Notice.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A.
1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE
P.O. BOX 3791
ORLANDO, FL 32802-3791

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OFFICE OF PETITIONS

In re Application of :
Mark O. Vogel, et al. :
Application No. 10/440,995 :
Filed: May 19, 2003 :
Attorney Docket No. 63214 :

ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 5

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

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OFFICE OF PETITIONS

In re Application of :
Kazuhiro Matsumura : DECISION ON PETITION
Application No. 10/441,026 :
Filed: May 20, 2003 :
Attorney Docket No. 1248-0649P :

This is a decision on the "PETITION CONTENDING THE OMISSION OF AN ITEM IN A NONPROVISIONAL APPLICATION," filed September 3, 2003, requesting, in effect, that the above-identified application be accorded a filing date of May 20, 2003, with page 1 of the specification considered part of the original application disclosure.

Application papers in the above-identified application were deposited on May 20, 2003. However, on July 25, 2003, the Office mailed a NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION, notifying applicant that the application papers had been accorded a filing date; however, page 1 of the specification (description and claims) appeared to have been omitted from the application.

Petitioner timely responded with the instant petition (and petition fee). Petitioner contends that page 1 of the specification was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers. In support thereof, petitioner included a copy of a postcard receipt stamped by OIPE on May 20, 2003, which petitioner maintains indicates that 84 pages of specification, including page 1, were submitted on filing on May 20, 2003. On petition, petitioner also submitted a copy of the entire specification, including claims and abstract, as petitioner maintains it was originally filed.

Although petitioner's postcard is *prima facie* evidence of the timely filing of the page 1 of the specification, consideration of this evidence is unnecessary[1]. A review of the electronic

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[1] 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. A review of the postcard receipt confirms that: 1) it was date stamped as received in the USPTO on May 20, 2003, and shows assignment of application No. 10/441026 to the papers submitted therewith 2) it specifically identifies the items being filed, including "Specification Consisting of: 84 pages," and 3) it lacks any annotation of nonreceipt of any item denoted on

copy of the application-as-originally filed and shown on PACRview, reveals that the application-as-filed included all pages of the specification, including page 1. This evidence supports a conclusion that page 1 was misplaced by the Office after initial receipt. Thus, the Notice of Omitted Items mailed July 25, 2003 was mailed in error.

The Notice of Omitted Items mailed July 25, 2003 is hereby **vacated**.

Accordingly, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee is being refunded to Deposit Account No. 02-2448, as authorized.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a **filing date of May 20, 2003**, using the application papers received in the Office and presently accorded that date; and
- using page 1 of the specification resupplied on petition filed September 3, 2003 (page 1 is shown in PACRview; however, the scanned version is not in the application file).

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to the undersigned at 703-305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

---

the postcard.

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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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WENDEROTH, LIND & PONACK
2033 K STREET N.W.
SUITE 800
WASHINGTON DC 20006-1021

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MAY 0 2 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Toshiharu Fujita	:	
Application No. 10/441,039	:	
Filed: May 20, 2003	:	
Attorney Docket No. 2003-0688A	:	

This is a decision on the petition, filed April 29, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on 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) 272-3208.

The examiner of Technology Center AU 3746 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ANTONELLI, TERRY, STOUT & KRAUS
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

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MAY 1 3 2005

OFFICE OF PETITIONS

In re Application of	:	
Takanori Nishiyama et al	:	
Application No. 10/441,064	:	ON PETITION
Filed: May 20, 2003	:	
Attorney Docket No. 500.32392CC6	:	

This is a decision on the petition, filed May 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 April 15, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

The instant petition under 37 CFR 1.313(c)(2), the RCE and the IDS, filed on May 12, 2005, are not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Carl Brundidge 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 act. However, if Mrl Brundidge desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Brundidge, the petitioner herein. Until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new 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).

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Technology Center Art Unit 2684 for processing of the request for continued examination under 37 CFR 1.114 filed May 12, 2005.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
MATTINGLY, STANGER, MALUR & BRUNDIDGE
1800 DIAGONAL ROAD, SUITE 370
ALEXANDRIA VA 22314

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.
10/441,067	05/20/2003	Gregory Joseph Phillips	47004.000232	3788

21967 7590 11/04/2004

HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER
MEINECKE DIAZ, SUSANNA M

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

cb

DECISION ON PETITION UNDER 37 C.F.R. 1.97 FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENT

The petition filed August 5, 2004 under 37 C.F.R. 1.97(d) for consideration of an information disclosure statement filed after Final has been:

[x] GRANTED

[ ] DENIED

The petition lacks:

[ ] The required fee under 37 C.F.R. 1.97(d) and 1.17(i)(1).

[ ] A proper certification as specified in 37 C.F.R. 1.97(d) and 1.97(e).

The information disclosure statement has been placed of record in the file but will not be considered by the examiner.

Tariq R. Hafiz
SPE, Art Unit 3623

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BORDEN LADNER GERVAIS L.L.P.
ANNE KINSMAN
WORLD EXCHANGE PLAZA
100 QUEEN STREET, SUITE 1100
OTTAWA, ON K1P 1J9, CA CANADA

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JUL 21 2008

In re Application of	:	
David N. Slocombe	:	
Application No. 10/441,071	:	ON PETITION
Filed: May, 20, 2003	:	
Attorney Docket No. PAT 697-2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 23, 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 November 1, 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). A three month extension of time pursuant to the provisions of 37 CFR 1.136(a) was filed. Accordingly, the date of abandonment of this application is May 2, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, 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.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2176 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

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Norton & Diehl, LLC
77 Brant Avenue
Suite 110
Clark, NJ 07066

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NOV 1 2 2004

OFFICE OF PETITIONS

In re Application of	:	
Hasan Kulaksiz, et. al.	:	
Application No. 10/441,089	:	ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. DRG0002 (DRG3.0-001 CIP)	:	

This is a decision on the petition under 37 CFR 1.182, filed April 29, 2004, to change the order of the inventor names.

The petition is **GRANTED**.

The order of inventor names will be changed as follows:

1. Hasan Kulaksiz
2. Cyril E. Geacintov
3. Alfred Janetzko
4. Wolfgang Stremmel

The above-identified application is being forwarded to Technology Center Art Unit 1641, for further processing, in due course.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 23 2005

FISH & RICHARDSON P.C.
P.O. Box 1022
Minneapolis, MN 55440-1022

In re application of
Hiroshi Kobata et al.
Application No. 10/441,098
Filed: May 20, 2003
For: METHOD AND APPARATUS FOR PREVENTING UNAUTHORIZED COPYING AND DISTRIBUTING OF ELECTRONIC MESSAGES TRANSMITTED OVER A NETWORK

: DECISION ON REQUEST
: FOR WITHDRAWAL OF
: ATTORNEY

This is a decision on the request filed on March 31, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED.**

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), the reason "the applicant has decided to directly handle prosecution", is not appropriate since it is not clear that the client initiated the transfer, or that the client knowingly or freely assents to the transfer to new counsel. A proper reason for withdrawal is enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6611

SNM/pav: 05/17/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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OBLON, SPIVAK, MCCLELLAND MAIER &
NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

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FEB 0 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Nobuo Kasahara et al	:	
Application No. 10/441,105	:	DECISION GRANTING PETITION
Filed: May 20, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 237957US3	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 31, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 18, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2852 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

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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.
10/441,111	05/20/2003	Chul-woo Lee	1101.0163C2CPC3	5942

89980 7590 01/08/2010
North Star Intellectual Property Law, PC
P.O. Box 34688
Washington DC, DC 20043

EXAMINER
CHU, KIM KWOK

ART UNIT	PAPER NUMBER
2627	

MAIL DATE	DELIVERY MODE
01/08/2010	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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MAIL

JAN 07 2010

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

North Star Intellectual Property Law, PC
P.O. Box 34688
Washington DC DC 20043

In re Application of:
LEE, CHUL-WOO, et al.
Application Serial No.: 10/441,111
Filed: May 20, 2003
For: **RECORDING/REPRODUCING APPARATUS HAVING AN OPTICAL PICKUP DEVICE TO READ FROM AND RECORD INFORMATION TO DISKS OF DIFFERENT THICKNESSES**

DECISION
ON PETITION

This is a decision on the petition filed October 6, 2009 under 37 CFR 1.181 requesting that the objection to the drawings set forth by the examiner in the Office action of August 6, 2009 be withdrawn.

The Petition is **Granted**.

In the Office action of August 6, 2009, the examiner objected to the drawings under 37 CFR 1.83 as failing to show every feature of the claimed invention. Particularly, that the claimed limitations "a first region", "a second region"; "first and second light beams", "an inner region", "a second region" must be shown or the features canceled from the claims.

Petitioner urges that these features are shown in the drawing figures. Petitioner states:

"Regarding claims 1, 3 and 6, a "first region" is clearly shown as region A1 in FIGS. 4 - 7 and the "second region" is clearly shown as region A2 in FIGS. 4 - 7. Regarding claim 11, an "inner region" is clearly shown as region A1 in FIGS. 4 - 7 and the "second region" is clearly shown as region A2 in FIGS. 4 - 7. Moreover, "first and second light beams" are shown in FIG. 6 as light beams of different widths. In particular, FIG. 6 shows that a first light beam, indicated by the dashed line, passes through the inner region A1 and second region A2 to focus onto a first optical medium 30b of a first thickness and shows that a second light beam, indicated by the outer solid line, passes through A1, A2 and an outer region A3 such that the light that passes through A1 and A3 focuses on a second optical medium 30a of a second thickness, but the light in the second region A2 does not reach the second optical medium 30a."

A careful review of the claims and drawings indicates that the features in question are shown in the drawing figures as set forth by petitioner. Accordingly, the objection to the drawings is withdrawn.

The application file will be forwarded to the examiner for consideration of the appeal brief and for appropriate action in due course.

Mark R. Powell

Mark R. Powell, Director
Technology Center 2600
Communications

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BAKER & HOSTETLER, LLP.
WASHINGTON SQUARE, SUITE 1100
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

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OCT 23 2003

OFFICE OF PETITIONS

In re Application of
David M. Carson, Vijay Mehta
and Harvey Schneider
Application No. 10/441,120
Filed: May 20, 2003
Title: CENTRIFUGE ENERGY
MANAGEMENT SYSTEM AND METHOD

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed September 24, 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
Senior Petitions Attorney
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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ALEXANDRIA, VA 22313-1450
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HARVEY SCHNEIDER
1872 BUCKS HILL ROAD
SOUTHBURY, CT 06488

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OCT 2 3 2003

OFFICE OF PETITIONS

In re Application of
David M. Carson, Vijay Mehta and Harvey Schneider
Application No. 10/441,120
Filed: May 20, 2003
Title: CENTRIFUGE ENERGY MANAGEMENT SYSTEM AND METHOD

Dear HARVEY SCHNEIDER:

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

BAKER & HOSTETLER, LLP.
WASHINGTON SQUARE, SUITE 1100
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

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GARVEY SMITH NEHRBASS & DOODY, LLC
THREE LAKEWAY CENTER
3838 NORTH CAUSEWAY BLVD., SUITE 3290
METAIRIE LA 70002

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OFFICE OF PETITIONS

In re Application of	:	
Williamson, John P.	:	
Application No. 10/441,134	:	ON PETITION
Filed: May 19, 2003	:	
Attorney Docket No. P02168US (98570.1P)	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 14, 2004, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed February 4, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on May 5, 2004. A Notice of Abandonment was mailed September 3, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

This matter is being referred to Technology Center 3700 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO IL 60601-6780

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FEB 0 8 2006

OFFICE OF PETITIONS

In re Application of :
Holland-Letz, Horst :
Application No. 10/441,135 : ON PETITION
Filed: May 19, 2003 :
Attorney Docket No. 222762 :

This is a decision on the petition under 37 CFR 1.181, filed March 10, 2005, requesting the withdrawal of the holding of abandonment in the above-identified application.

The petition to withdraw the holding of abandonment is **GRANTED.**

The above-identified application was held abandoned for failure to timely reply to the non-final Office action mailed July 23, 2004, which set a shortened statutory period for reply of three (3) months. A reply was due on or before October 23, 2004. A Notice of Abandonment was mailed on February 8, 2005.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard, which acknowledges receipt by the U.S. Patent and Trademark Office (USTPO) on January 28, 2005 of 1. Fee Transmittal; 2. Response to Office action; 3. Replacement Drawings; 4. Certified copy of German Patent Application No. 100 10 311.0; 5. Copy of Claim of Priority and postcard; 6. copy of Preliminary Amendment and postcard; and 6. Return postcard. Additionally, petitioner has supplied a copy of the previously mailed correspondence, which bears a certificate of mailing date of January 24, 2005.

A review of the application file confirms receipt of the reply submitted on January 24, 2005.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged.

This matter is being referred to Technology Center AU 3723 for further examination on the merits.

Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Chase at (571) 272-3206.

Frances Hicks
Petitions Examiner
Office of Petitions

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SWANSON & BRATSCHUN L.L.C.
1745 SHEA CENTER DRIVE
SUITE 330
HIGHLANDS RANCH CO 80129

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MAY 04 2007

OFFICE OF PETITIONS

In re Patent No. 7,074,194	:	
Issued: July 11, 2006	:	
Application No. 10/441,155	:	PATENT TERM ADJUSTMENT
Filed: May 19, 2003	:	
Dkt. No.: ISC.012	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT (PTA) UNDER 37 C.F.R. § 1.705(d)," filed September 7, 2006.

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. 7,074,194 on July 11, 2006. The instant request for reconsideration was timely filed in accordance with 37 C.F.R. § 1.705(d). The patent issued with a PTA of 241 days. Patentees argue that the application is entitled to an adjustment of 376 days.

A review of the application history reveals that an adjustment of 281 days under 37 CFR 1.702(a)(1) and 1.703(a)(2) can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed.

A further adjustment of 80 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(4) for failure to issue the patent within four months of the date of receipt of the issue fee payment.

Patentees argue that this adjustment, however, should be 95 days.

However, the adjustment began April 23, 2006, the day after the date that is four months after the date that the issue fee

payment was received, and ended July 11, 2006, the date the patent issued. *See*, 37 CFR 1.703(a)(6).

Further review of the record reveals that there was no failure to engage in reasonable efforts to conclude prosecution by applicants. The reduction of 120 days accorded in connection with the request for an examiner initialed IDS Form 1449 made on December 22, 2005 is not deemed a reduction within the meaning of 37 CFR 1.704(c)(10) as argued by applicants. The IDS was submitted September 2, 2003. Applicants requested an examiner initialed IDS Form 1449 on July 26, 2005 to no avail. Thus, the second request for an initialed IDS Form 1449 submitted December 22, 2005 is not deemed, in this instance, to constitute a failure to engage in reasonable efforts to conclude prosecution.

In view thereof, at the time of issuance, the application was entitled to a patent term adjustment of 361 days.

Receipt is 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 361 days.

Telephone inquiries specific to this matter may be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A. Fries

Kery Fries
Senior Patent Attorney
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Draft Certificate of Correction
Adjusted Patent Calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	7,074,194 B2
DATED	:	July 11, 2006
INVENTOR(S)	:	Crosby, 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 241 days

Delete the phrase "by 241 days" and insert – by 361 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 19, 2007

TO SPE OF : ART UNIT 1774

SUBJECT : Request for Certificate of Correction for Appl. No.10/441164 patent no.7179542

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: _____

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
SPE

1774
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/15/06

TO SPE OF : ART UNIT 2852

SUBJECT : Request for Certificate of Correction on Patent No.: 6996358 / 10441165

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:

DAVID M. GRAY
SUPERVISORY PATENT EXAMINER

SPE

2852
Art Unit

BEST AVAILABLE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 2/3/05

TO SPE OF : ART UNIT 3612

SUBJECT : Request for Certificate of Correction on Patent No.: 6758509

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-915
Palm location 7580 - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

DZ
Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ Approved — All changes apply.
- ☐ Approved in Part — Specify below which changes do not apply.
- ☐ Denied — State the reasons for denial below.

Comments:

SPE

3612
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark

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COMMISSIONER FOR PATENTS
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WWW.USPTO.GOV

Paper No. None

Mr. Yong Min Cho
16605 Sea Island Court
Silver Spring MD 20905

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NOV 21 2005

OFFICE OF PETITIONS

In re Application of
Yong Min Cho et al.
Application No. 10/441,210
Filed: May 20, 2003
Title: MOBILE LEVEE SYSTEM

DECISION GRANTING
PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition filed November 1, 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 in a timely manner to the non-final Office action, mailed May 5, 2004, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on August 6, 2004. A notice of abandonment was mailed on November 16, 2004.

With the present petition, Petitioner has filed the petition fee and the proper statement of unintentional delay. A terminal disclaimer is not required. Petitioner has also made reference to a continuation application, application number 11/273,250, filed on November 15, 2005.

As such, this petition under 37 C.F.R. §1.137(b) is **GRANTED**.

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuing Application No. 11/273,250.

---

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.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence unless a Change of Correspondence Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

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.

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

cc: Thomas S. Auchterlonie
Harness, Dickey & Pierce
11730 Plaza America Drive,
Suite 600
Reston, Virginia 20190

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No.

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	:	
Ambiru et al.	:	
Application No. 10/441,223	:	LETTER REGARDING
Filed: May 20, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 04329.3057	:	

This is in response to the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT," filed July 14, 2008. Pursuant to their duty of candor and good faith to the Office, applicants disclose that the initial determination of patent term adjustment at the time of the mailing of the notice of allowance should be corrected from eight hundred fifty-five (855) days to eight hundred twenty-eight (828) days.

The request for review of the patent term adjustment is **GRANTED to the extent indicated herein**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is eight hundred twenty-seven **(827)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On June 13, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 855 days. Applicants state no basis for their disclosure that the patent term adjustment should be reduced to 828 days.

Nonetheless, a review of the record confirms that in response to the final Office action mailed November 20, 2006, applicants did not file a response in compliance with §1.113(c) until March 20, 2007, three months and 28 days later. As such, a period of reduction of 28 days is being entered pursuant to 37 C.F.R. §1.704(b).

In view thereof, the correct initial determination of the patent term adjustment at the time of the mailing of the notice of allowance is eight hundred twenty-seven (827) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the $200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded and the period is not consumed by the request for continued examination).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day : Saturday
Date: 8/30/2008

PALM INTRANET

Time: 14:42:11

PTA Calculations for Application: 10/441223			
Application Filing Date:	05/20/2003	PTO Delay (PTO):	855
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	827
PTO Delay Adjustment:	-28		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
64	08/30/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		28	
57	06/13/2008	MAIL NOTICE OF ALLOWANCE			
56	06/11/2008	ISSUE REVISION COMPLETED			
55	06/11/2008	DOCUMENT VERIFICATION			
54	06/11/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
53	06/09/2008	NOTICE OF ALLOWABILITY			
49	03/31/2008	DATE FORWARDED TO EXAMINER			
48	02/15/2008	RESPONSE AFTER NON-FINAL ACTION			
47	11/15/2007	MAIL NON-FINAL REJECTION	118		42
46	11/13/2007	NON-FINAL REJECTION			
45	09/10/2007	DATE FORWARDED TO EXAMINER			
44	03/20/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
43	09/10/2007	DATE FORWARDED TO EXAMINER			
42	03/20/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
41	09/10/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
37	05/20/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	05/20/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	03/19/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	03/19/2007	NEW OR ADDITIONAL DRAWING FILED			
26	03/20/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
25	11/20/2006	MAIL FINAL REJECTION (PTOL - 326)			

24	11/13/2006	FINAL REJECTION			
23	10/17/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
22	11/06/2006	DATE FORWARDED TO EXAMINER			
21	10/17/2006	RESPONSE AFTER NON-FINAL ACTION			
20.7	10/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	10/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	08/01/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	07/27/2006	MAIL NON-FINAL REJECTION	737		-1
17	07/24/2006	NON-FINAL REJECTION			
16	06/15/2006	CASE DOCKETED TO EXAMINER IN GAU			
15	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
14	02/22/2006	CASE DOCKETED TO EXAMINER IN GAU			
13.7	04/11/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	04/11/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
11.7	09/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	09/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	04/15/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	11/21/2003	APPLICATION DISPATCHED FROM OIPE			
8	11/21/2003	APPLICATION IS NOW COMPLETE			
7	09/22/2003	ADDITIONAL APPLICATION FILING FEES			
6	09/22/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	09/22/2003	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
4	07/21/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	05/31/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/20/2003	INITIAL EXAM TEAM NN			

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73 418 PINYON ST.
PALM DESERT, CA 92260

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JUN 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Johnson, Preston Danal	:	
Application No. 10/441,227	:	ON PETITION
Filed: May 20, 2003	:	
Title: MECHANIC'S AIR METER	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed October 6, 2003, 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 Office apologizes for the delay in the petition decision.

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 from the applicant, along with a copy of his birth certificate.

The instant application is currently abandoned for failure to reply to the Office action mailed August 3, 2004. Accordingly, the above-identified application will be accorded special status if and when revived.

Telephone inquiries concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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KRAGULJAC & KALNAY
4700 ROCKSIDE ROAD
SUMMIT ONE, SUITE 510
INDEPENDENCE, OH 44131

Mail Date: 04/20/2010

Applicant	: Frank K. Wacker	: DECISION ON REQUEST FOR
Patent Number	: 7623903	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/441,235	: 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 **1458** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.