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Paper No. 10

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 MARKET STREET, SUITE 540
SAN FRANCISCO, CA 94105

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JAN 2 3 2004

OFFICE OF PETITIONS

In re Application of :
Brian I. Marcus et al :
Application No. 10/455,022 : DECISION GRANTING PETITION
Filed: June 4, 2003 : UNDER 37 CFR 313(c)(2)
Attorney Docket No. EDU.021 :

This is a decision on the petition, filed January 20, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination).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

Petitioner is advised that the issue fee paid on December 29, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

Upon receipt of the file in the Office of Petitions, a decision will be rendered on the petition to accept a late claim for priority under 37 CFR 1.78(a)(3).

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

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

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Paper No. 11

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 MARKET STREET, SUITE 540
SAN FRANCISCO, CA 94105

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MAR 15 2004

OFFICE OF PETITIONS

In re Application of
Brian I. Marcus
Application No. 10/455,022
Filed: June 4, 2003
Attorney Docket No. EDU.021

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 20, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the additional benefit of priority to Application No. 08/581,437, filed December 29, 1995, set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

The instant pending application was filed on June 4, 2003, and was pending at the time of filing of the instant petition. A reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, prior-filed nonprovisional application is submitted

after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the above-noted, prior-filed nonprovisional application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the 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 applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

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

This application is being forwarded to Technology Center Art Unit 3714 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application set forth in the amendment filed January 20, 2004.

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

ATTACHMENT: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 15

DATE : 06/02/05

TO SPE OF : ART UNIT 3714

SUBJECT : Request for Certificate of Correction on Patent No.: 6739874

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

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

Thank You For Your Assistance

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

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

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

Comments:

MONICA CARTER
SUPERVISORY PATENT EXAMINER

SPE 3715 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,739,874 B2
DATED : May 25, 2004
INVENTOR(S) : Marcus et al.

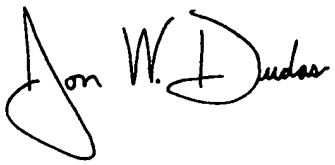
It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title page,
Item [63], **Related U.S. Application Data**, please delete the current priority claim and replace it with the following:

-- Continuation of Application No. 10/260,965, filed on Sep. 30, 2002, which is a continuation of Application No. 09/127,111, filed on Jul. 31, 1998, now Pat. No. 6,464,503, which is a continuation of Application No. 08/890,294, filed on Jul. 9, 1997, now Pat. No. 5,823,782, which is a continuation of Application No. 08/581,437, filed on Dec. 29, 1995, now abandoned. --

Signed and Sealed this

Twenty-first Day of December, 2004



JON W. DUDAS
Director of the United States Patent and Trademark Office

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MICHAEL P. DILWORTH - LLP LEGAL
CROMPTON CORPORATION
199 BENSON ROAD
MIDDLEBUEY, CT 06749

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JAN 2 4 2007

OFFICE OF PETITIONS

In re Application of :
William P. Enlow, et al. :
Application No. 10/455,027 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. US 130477-1 08SC :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed August 8, 2006.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before May 9, 2006. A Notice of Abandonment was mailed on July 19, 2006. On August 8, 2006, the present petition was filed.

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

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Blinkley
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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David K. Lucente, Seagate Technology LLC
Intellectual Property - COL2LGL
389 Disc Drive
Longmont, CO 80503

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OCT 24 2006

OFFICE OF PETITIONS

In re Application of	:	
Tao Zhang	:	
Application No. 10/455,029	:	ON PETITION
Filed: June 5, 2003	:	
Title of Invention:	:	
REPEATABLE RUNOUT ESTIMATION IN A	:	
NOISY POSITION ERROR SIGNAL	:	
ENVIRONMENT	:	

This is a decision on the Petition for Unintentionally Delayed Benefit Claim Under 37 CFR 1.78(a)(3), filed November 25, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior filed nonprovisional application set forth in the amendment filed with the petition. The delay in treating this petition is regretted.

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

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

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

The address on the petition is different from the address of record. If Petitioner desires to receive further correspondence with respect to this application, a change of correspondence address must be filed. A courtesy copy of this Decision is being forwarded to Petitioner at the address appearing on the petition; however, all future correspondence will be sent to address of record until instructions to the contrary are received.

Any inquiries concerning this decision may be directed to 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 2627 for appropriate action on the amendment filed November 25, 2005, including consideration by the examiner of applicant's

entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Frances Hicks

Frances Hicks
Lead Paralegal
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

CC: WESTMAN, CHAMPLIN & KELLY, P.A.
SUITE 1400 - INTERNATIONAL CENTRE
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319

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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
10/455,029	06/05/2003	2627	750	STL11121	6	20	3

CONFIRMATION NO. 3876

David K. Lucente, Seagate Technology LLC
Intellectual Property - COL2LGL
389 Disc Drive
Longmont, CO 80503

CORRECTED FILING RECEIPT

OC000000020630036

Date Mailed: 09/28/2006

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)

Tao Zhang, Shakopee, MN;

Power of Attorney:

Joseph Villella Jr--30599
Shawn Dempster--34321
David Lucente--36202
Carol Bordas--37284
Raghunath Minisandram--38683
Mitchell McCarthy--38794
Paul Dietz--38858
Derek Berger--45401
Kirk Cesari--47479
Jennifer Buenzow--50124

Domestic Priority data as claimed by applicant

This application is a CIP of 10/277,768 10/22/2002 PAT 6,847,503

Foreign Applications

If Required, Foreign Filing License Granted: 08/04/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/455,029

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Repeatable runout estimation in a noisy position error signal environment

Preliminary Class

360

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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Susan M. Donahue
Rockwell Automation, Inc. 704-P
1201 South Second Street
Milwaukee WI 53204-2496

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AUG 0 9 2004

OFFICE OF PETITIONS

In re Application of :
David W. Pfeiffer, et al. :
Application No. 10/455,039 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. 110003.00024.03AB101 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 27, 2004, 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 21, 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]

A review of the application file record does not indicate a change of address has been filed in this case; however, the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries should be directed to the undersigned at (703) 305-9220.

[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 2835 for further processing of the request for continued examination under 37 CFR 1.114 filed July 27, 2004.

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

cc: Michael A. Jaskolski
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202

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

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OFFICE OF PETITIONS

In re Application of :
Yarger, et al. :
Application No. 10/445,049 : DECISION ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. TELLP005 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 8. 2008, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned March 12, 2008 for failure to timely submit a proper reply to the non-final Office action mailed December 11, 2007. The non-final Office action set a three month statutory period of time for reply. No petition for extension of time under 37 CFR 1.136 was timely submitted. Notice of Abandonment was mailed July 9, 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 required 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). Since the $1,020.00 extension of time fee submitted with the petition was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

This application is being referred to Technology Center AU 2619 for appropriate action by the Examiner in the normal course of business on the reply received September 8, 2008.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/455,049	06/05/2003	Brian L. Yarger	TELLP005

CONFIRMATION NO. 3868

POWER OF ATTORNEY NOTICE

23689
Jung-hua Kuo
Attorney At Law
PO Box 3275
Los Altos, CA 94024

OC000000032315973

Date Mailed: 09/29/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/08/2008.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/ambrown/

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

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/455,049	06/05/2003	Brian L. Yarger	TELLP005

CONFIRMATION NO. 3868

57690
HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

POA ACCEPTANCE LETTER

OC000000032315975

Date Mailed: 09/29/2008

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/08/2008.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/ambrown/

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

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Paper No. 5

Haskell E. Downs II
Ste 205
3415 Greystone Dr.
Austin TX 78731

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NOV 2 1 2003

OFFICE OF PETITIONS

In re Application of
Downs
Application No. 10/455,057
Filed: June 5, 2003
For: DATA TRANSFORMATION AND DISPLAY SOFTWARE

DECISION GRANTING PETITION

This is a decision on the petition filed October 6, 2003, to establish that Figure 9 was part of the originally filed application.

On June 5, 2003, the application was filed.

On August 7, 2003, the Office of Initial Patent Examination mailed a Notice stating that the application had been accorded a filing date of June 5, 2003, and advising applicant that Figure 9 described in the specification appeared to have been omitted.

Upon review of the record, Figure 9, deposited on June 5, 2003, has been located in the file. Therefore the application was complete on filing.

In view of the above, the petition is **granted**.

The petition fee of $130 has been credited back to petitioner's credit card.

The Notice mailed August 7, 2003, is hereby vacated to the extent the Notice stated Figure 9 was missing.

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

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of June 5, 2003, using the application papers, including Figure 9, filed on June 5, 2003.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

cc: Haskell E. Downs II
2448 Rick Whinery
Austin, TX 78728

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In re Application of Liu and Rabbani :
Application No. 10/455,101 : Decision Dismissing Petition
Filing Date: June 4, 2003 : Under 37 CFR 1.78(a)(3)
Attorney Docket No. 59046.000077 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 14, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional and provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**

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

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

The petition does not satisfy item (1) above. The amendment is not acceptable as drafted since it improperly incorporates by reference prior-filed applications.

Page 1 of the specification states, "All patents, patent applications ... identified in this application are hereby incorporated by reference in their entirety."

The amendment seeks to add the following statement to the beginning of the specification,

> This is a continuation application of U.S. Patent Application Serial No. 09/046,841, filed on March 24, 1998, now abandoned, which is a divisional application of U.S. Patent Application Serial No. 08/822,963, filed on March 21, 1997, also abandoned.

One cannot incorporate by reference applications or other matter after an application's filing date because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). *See* Dart Industries v. Banner, 636 F.2d 684, 207 U.S.P.Q. 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

The claims for priority may be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).[1] The Office notes submission of the priority claim via an Application Data Sheet would avoid the incorporation by reference raised by adding the claim to the specification.

Before the petition under 37 CFR §§ 1.78(a)(3) 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.

The petition states the petition fee of $1,370 is included as part of the papers filed. However, Office records fail to indicate the Office received the fee. Therefore, the fee of $1,370 has been charged to petitioner's deposit account.

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

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

Any questions concerning this matter may be directed to Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

---

[1] 37 CFR 1.76(b)(5) states,

> Providing [domestic priority] information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and § 1.78(a)(2) or § 1.78(a)(5), and need not otherwise be made part of the specification.

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OFFICE OF PETITIONS

In re Application of Liu and Rabbani :
Application No. 10/455,101 : Decision Granting Petition
Filing Date: June 4, 2003 : Under 37 CFR 1.78(a)(3)
Attorney Docket No. 59046.000077 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 5, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional and provisional application set forth in the concurrently filed amendment.

The petition is **granted**.

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

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

This application is being forwarded to Technology Center Art Unit 1636 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.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/455,101	06/04/2003	1636	375	59046.000077	13	2

CONFIRMATION NO. 4572

CORRECTED FILING RECEIPT

OC000000023401770

21967
HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Date Mailed: 04/17/2007

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

Applicant(s)

Dakai Liu, Islip, NY;
Elazar Rabbani, New York, NY;

Power of Attorney: The patent practitioners associated with Customer Number **21967**.

Domestic Priority data as claimed by applicant

This application is a CON of 09/046,841 03/24/1998 ABN
which is a DIV of 08/822,963 03/21/1997 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 07/23/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/455,101

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

Vectors and viral vectors, and packaging cell lines for propagating same

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

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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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NEW YORK, NY 10022

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JUN 07 2010

OFFICE OF PETITIONS

In re Application of	:	
Dakai LIU, et *al.*	:	
Application No. 10/455,101	:	DECISION ON PETITION
Filed: June 4, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. **59046.77 Enz-56(D2)(C)**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 19, 2010, 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, June 24, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 25, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) an adequate statement of unintentional delay.

There is no indication that the petition is signed by a registered patent attorney of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Christopher J. Nichols, Ph.D. appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Nichols desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Nichols, 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.

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

This application is being referred to Technology Center AU 1636 for appropriate action by the Examiner in the normal course of business on the reply received March 19, 2010.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **CHRISTOPHER J. NICHOLS, PH.D.**
HUNTON & WILLIAMS, LLP
1900 K STREET NW
WASHINGTON, DC 20006-1109

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PHILADELPHIA PA 19103

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OFFICE OF PETITIONS

In re Application of :
MEINS, et al. :
Application No. 10/455,125 : DECISION ON PETITION
Filed: June 5, 2003 : TO WITHDRAW
Attorney Docket No. CING-0199/154.US.C2(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 November 7, 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 Eduardo Carreras on behalf of all attorneys of record who are associated with customer No. 54499. All attorneys/agents associated with the Customer Number 54499 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

There is an outstanding Office action mailed October 3, 2006 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **CHARLENE L. LEWIS**
9037 6TH AVENUE NW
SEATTLE, WA 98117

cc: **ROBERT Z. EVORA**
4741 PLANTERS WALK
DOUGLASVILLE, GA 30135

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/455,125	06/05/2003	Charlene L. Meins	CING-0199/154.US.C2(1)

CONFIRMATION NO. 4021

OC000000021874132

54499
WOODCOCK & WASHBURN LLP
ONE LIBERTY PLACE
46TH FLOOR
PHILADELPHIA, PA 19103

Date Mailed: 01/08/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/07/2006.

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

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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David K. Lucente
Seagate Technology LLC
Intellectual Property – COL2LGL
389 Disc Drive
Longmont, CO 80503

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OFFICE OF PETITIONS

In re Application of :
Sosseh et al. :
Application No. 10/455,134 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. STL10933 :

This is a decision on the petition under 37 CFR 1.137(a), filed on June 22, 2006, to revive the above-identified application.

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

The application became abandoned for failure to file a proper response to the final Office action mailed on October 14, 2005, which set a three (3) month shortened statutory period for reply. On December 14, 2005, petitioner submitted an amendment in response to the final Office action. On May 22, 2006, the examiner mailed an Advisory Action, indicating that the amendment did not *prima facie* place the application in condition for allowance. On June 27, 2006, after the filing of the present petition, the Office mailed a Notice of Abandonment.

On June 22, 2006, petitioner filed the present petition, a statement of unavoidable delay, a request for an extension of time for response within the first month, a notice of appeal, and a pre-brief conference request, as well as paid the requisite fees. In the present petition, petitioner stated that he filed an amendment on December 14, 2005, within two months of the mailing of the final Office action. Petitioner contended that under normal circumstances the six-month statutory period for reply to the final Office action would have expired (at midnight) on April 14, 2006; however, the Advisory Action was not mailed until May 22, 2006, which made it impossible for petitioner to take action before the expiration of the six-month statutory period. Petitioner argued that the intent of the statutory safe harbor provision under 35 U.S.C. 133 was to ensure that when a reply is filed within two months of a final Office action, then an Advisory Action would be forthcoming in time to allow an applicant to take further action. Furthermore, petitioner stated: "Applicant's belief is based partially on an

objective balancing of equities, in that if it were not so then the Examiner could arbitrarily force Applicant to pay the fee for an RCE by simply delaying the issuance of the advisory action." *Petition dated 06/22/06, p. 2*

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

> (1) The reply required to the outstanding Office action or notice, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.
>
> (2) The petition fee as set forth in 37 CFR 1.17(l);
>
> (3) A 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) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

This petition lacks item (3) above.

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

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy 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

[1] 35 U.S.C. § 133.

> failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[2]

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. 133 and 37 CFR 1.137(a).[3] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[4]

A response to a final Office action in the form of an amendment may be entered if it *prima facie* places the application in condition for allowance. However, the admission or refusal to admit any amendment after final, and any related proceedings, will not operate to relieve the application from its condition subject to appeal or save the application from abandonment under 37 CFR 1.135.[5] Further, the entry of an after-final amendment is not a matter of right, and it is incumbent upon an applicant to take steps to ensure against abandonment of an application.

In the present case, the record reveals that petitioner initially replied within two months from the mailing date of the final Office action, and that the examiner mailed the Advisory Action on May 22, 2006, after the expiration of the six-month statutory period for reply. Nevertheless, the Office reminds petitioner that the maximum statutory period for reply to an Office action is six month. 35 U.S.C. 133. Specifically, the Office notes:

> If an applicant initially replies within 2 months from the date of mailing of any final rejection setting a 3-month shortened statutory period for reply **and the Office does not mail an advisory action until after the end of the 3-month shortened statutory period, the period for reply for purposes of determining the amount of any extension fee will be the date on which the Office mails the advisory action advising applicant of the status of the application, but in no event can the period extend beyond 6 months from the date of the final rejection.** This procedure applies only to a first reply to a final rejection.

MPEP 710.02(e)(I) (emphasis added).

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

[3] See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

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

[5] See 37 CFR 1.116.

Therefore, petitioner was required by statute to file a proper and timely reply to the final Office action on or before April 14, 2006 to avoid abandonment. 35 U.S.C. 133 does not permit petitioner to extend the period for reply beyond six months from the mailing date of the final Office action. For this reason, petitioner's request for an extension of time for response within the first month is inappropriate because it was submitted beyond the six-month statutory period for reply. As the Office cannot extend the six-month statutory period for reply by an additional one-month, the extension of time fee will be credited to petitioner.

The record further reveals that petitioner did not take appropriate action to ensure that a proper response was filed timely to prevent the application from becoming abandoned. It is regrettable that the Office did not mail the Advisory Action until May 22, 2006; however, it is clear from 37 CFR 1.116 that abandonment of an application is risked when an amendment after a final Office action is filed.

Delay that results from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute "unavoidable" delay.[5] Abandonment takes place by operation of law for failure timely submit a proper reply to an Office action, not by the mailing of an Office communication, such an Advisory Action.[6] This rule clearly indicates that the mere filing of an after-final amendment does not save the application from abandonment. Only the filing of a Notice of Appeal, a Request for Continued Examination accompanied by a proper submission, or a continuing application guarantees the pendency of the application, not the filing an amendment after final rejection. Thus, the application became abandoned due to petitioner's failure to file a Notice of Appeal, RCE and submission, or continuing application prior to the expiration of the time period for reply to the final Office action, and not because of any delay in the mailing the Advisory Action or other error on the part of the U.S. Patent and Trademark Office.

CONCLUSION

Petitioner has not provided a sufficient showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable. Accordingly, the petition must be **dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." Extensions of time are permitted under 37 CFR 1.136(a).

ALTERNATIVE VENUE

While the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable, petitioner is not precluded from seeking relief by filing a petition under

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[5] See Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1132 (N.D. Ind. 1987); Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981).

[6] MPEP 711.03(c). See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 299-30 (CCPA 1964); Krahn v. Comm'r, 15 USPQ2d 1823, 1824 (E.D. Va. 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1984).

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

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 L. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

David K. Lucente
Seagate Technology LLC
Intellectual Property – COL2LGL
389 Disc Drive
Longmont, CO 80503

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APR 17 2007

OFFICE OF PETITIONS

In re Application of
Sosseh et al.
Application No. 10/455,134
Filed: June 5, 2003
Attorney Docket No. STL10933

DECISION ON PETITIONS

This is a decision on the renewed petition under 37 CFR 1.137(a), filed on August 21, 2006, to revive the above-identified application. This is also a decision on the petition under 37 CFR 1.137(b), filed on August 16, 2006.

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

The application became abandoned for failure to file a proper response to the final Office action mailed on October 14, 2005, which set a three (3) month shortened statutory period for reply. On December 14, 2005, petitioner submitted an amendment in response to the final Office action. On May 22, 2006, the examiner mailed an Advisory Action, indicating that the amendment did not *prima facie* place the application in condition for allowance. On June 22, 2006, petitioner filed a petition under 37 CFR 1.137(a). On June 27, 2006, the Office mailed a Notice of Abandonment. On August 4, 2006, the Office mailed a decision dismissing the petition under 37 CFR 1.137(b).

In the present petition, petitioner once again argued:

> ...the language of 35 U.S.C. 133 expressly provides a safe harbor for the applicant caught in the midst of unavoidable circumstances:
>
> > Upon failure of the applicant to prosecute the application within six months after any action therein... the application shall be regarded as abandoned ...unless it be shown to the satisfaction of the Director that such delay was unavoidable.
> > (excerpt of 35 USC 133, emphasis added).

> A plain reading of the statute leads to the reasonable conclusion that Congress intentionally empowered the Office under certain circumstances to enter a submission filed later than six months after the final rejection. Applicant requests reconsideration of the Petition in light of the flexibility afforded by the express statutory language, and not the mischaracterization that the statute defines an inalterable and continuous six month period form the final rejection date as in the Decision.

Petition dated August 21, 2006, p. 2.

Furthermore, petitioner asserted that petitioner's inability to respond within six months of the final Office action was unavoidable because petitioner had not received the Advisory Action within that period. Petitioner contended that petitioner's actions were within the unavoidable standard due to the untimely action of the Examiner.

Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed.

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

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

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

This petition lacks item (3) above.

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

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy 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

[1] 35 U.S.C. § 133.

> failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[2]

Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[4]

The Office has thoroughly considered petitioner's arguments, however, the Office does not find them persuasive. The Office disagrees with petitioner's reading of 35 U.S.C. 133. Pursuant to 35 U.S.C. 2(b), the USPTO was given the authority to establish regulations, not inconsistent with law, which govern the processing of patent applications and the conduct of proceedings in the Office. Therefore, the Office was delegated the authority to set forth the criteria necessary to meet the standard of unavoidable delay in an abandoned patent application. The Office has determined that unless the requirements for unavoidable delay as set forth in 37 CFR 1.137(a) are meet, the application will remain abandoned.

That being said, the Office has determined that an applicant may not rely upon the non-receipt of an Advisory Action to establish that the delay was unavoidable. 37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal. A delay is not "unavoidable" when an applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action. *See* MPEP 711.03(c)(III)(C)(2).

Accordingly, petitioner has not shown to the satisfaction of the Director that the delay was unavoidable within the meaning of 37 CFR 1.137(a) and 35 U.S.C. 133. As petitioner failed to meet the criteria of 37 CFR 1.137(a), the petition must be dismissed.

Petition Under 37 CFR 1.137(b)

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

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

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

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

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

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Accordingly, the petition under 37 CFR 1.137(b) is **granted**.

This matter is being forwarded to the Technology Center Art Unit 2837. It is noted that petitioner filed a notice of appeal and a Pre-Appeal Brief Request.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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DAVID K. LUCENTE; SEAGATE TECHNOLOGY LLC
INTELLECTUAL PROPERTY DEPT. - COL2LGL
389 DISC DRIVE
LONGMONT, CO 80503

Mail Date: 04/21/2010

Applicant	: Raye Abdoulie Sosseh	: DECISION ON REQUEST FOR
Patent Number	: 7589484	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/455,134	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **566** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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MERCHANT AND GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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MAY 09 2007

OFFICE OF PETITIONS

In re Application of	:	
Yuanxing Zhang, et al	:	
Application No. 10/455,136	:	DECISION ON PETITION
Filed: June 5, 2003	:	TO WITHDRAW
Attorney Docket No. 954879US01	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 22, 2007.

The request is **APPROVED**.

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

Sarah M. Monfeldt has been withdrawn as attorney of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There is an outstanding Office action mailed April 3, 2007.

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

April Wise
Petitions Examiner
Office of Petitions

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KOESTNER BERTANI LLP
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IRVINE, CA 92612

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OCT 2 7 2008

OFFICE OF PETITIONS

In re Application of
Walter M. Franklin III et al
Application No. 10/455,148
Filed: June 4, 2003
Attorney Docket No. SW-00769/a)P012 USC1)

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 7, 2008, to revive the above-identified application.

The petition is **DISMISSED.**

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

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 15, 2005. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

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

a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lack items (1) and (3).

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

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (2 years) in resuming

prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on March 16, 2006. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Mary Bertani was counsel of record at the time of abandonment, Ms. Bertani should explain why this application became abandoned while it was under her control and what efforts she made to further reply of itself and with whom this matter was discussed outside of Ms. Bertani. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), Ms. Bertani and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons responsible for handling this application, and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The

December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 2 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons handling this application and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. See also New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

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

Irvin Dingle
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/455,148	**Applicant(s)** FRANKLIN ET AL.	
	Examiner Alexander Thomas	**Art Unit** 1794	

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

THE REPLY FILED 07 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *14,15 and 31*.
   Claim(s) rejected: *12,13,16-30 and 32*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the proposed amendment has not been entered.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

//Alexander Thomas//
Primary Examiner, Art Unit 1794

Continuation of 3. NOTE: the proposed amendments to claims 12 and 21 would raise new issues if entered. If the proposed amendments were entered, rejections of claims 13, 14 and 30 under 35 USC 112, second paragraph, would have to be made because the independent claims 12 and 21 define a cruciform (+) shaped connector and the dependent claims define connectors that are not of a curciform (+) shape. Also, claim 16 would not have clear antecedent basis for the terms "the two legs" and in claim 21 the term "attachable" should be --

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OFFICE OF PETITIONS

In re Application of :
Walter M. Franklin III et al :
Application No. 10/455,148 :
Filed: June 4, 2003 :
Attorney Docket No. SW-00769/a(P012 USC1) :

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed January 15, 2009, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center AU 1772 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ALFRED M. WALKER
225 OLD COUNTRY ROAD
MELVILLE, NY 11747-2712

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SEP 29 2005

OFFICE OF PETITIONS

In re Application of :
Peter Dowrick :
Application No. 10/455,152 : DECISION ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. DOWRICK - UTIL :

This is a decision on the petition filed May 31, 2005, requesting that the amendment date be changed to March 15, 2005.

A review of USPTO records show that the amendment was received on March 15, 2005. Accordingly, the present petition is **dismissed as moot.** No petition fee is required.

Telephone inquiries concerning this matter may be directed to Irvin Dingle at (571) 272-3229.

Frances Hicks for
Marianne E. Jenkins
Petitions Examiner
Office of Petitions

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IBM CORPORATION
INTELLECTUAL PROPERTY LAW
11501 BURNET ROAD
AUSTIN TX 78758

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JAN 21 2009

OFFICE OF PETITIONS

In re Application of :
Brandon Brockway et al. :
Application No. 10/455,173 : DECISION ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. AUS920030338US1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 12, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before November 18, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed August 18, 2008. Accordingly, the date of abandonment of this application is November 19, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and the publication fee of $300, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted.

The change of address filed with the instant petition has been entered. However, the address on the petition is still different from the new customer number address of record. Therefore, 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.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: Lynne D. Anderson
333 John Carlyle Street
Suite 635
Alexandria, VA 22314

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

CHRISTIE, PARKER & HALE, LLP
PO BOX 7068
PASADENA, CA 91109-7068

Mail Date: 06/07/2010

Applicant	: Saul N. Izaguirre	: DECISION ON REQUEST FOR
Patent Number	: 7625521	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/455,217	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **619** 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.

DO NOT SEND TO WAREHOUSE

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 42605 10455218 Paper No.: _____

TO SPE OF : ART UNIT 1711

SUBJECT : Request for Certificate of Correction on Patent No.: 6770448

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

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

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

Should the COC be granted?

RJohnson

Thank You For Your Assistance

Certificates of Correction Branch

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

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

Comments:

_____

_____

_____

_____

_____

_____ SPE _____ Art Unit

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HESLIN ROTHENBERG FARLEY & MESITI PC
5 COLUMBIA CIRCLE
ALBANY, NY 12203

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SEP 27 2007

OFFICE OF PETITIONS

In re Patent No. 7,104,074	:	
Issued: September 12, 2006	:	
Application No. 10/455,223	:	NOTICE
Filed: June 4, 2003	:	
Attorney Docket No.: 2035.019	:	

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

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

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

This application no longer qualifies for small entity status. Accordingly, all future fees must be paid at the large entity rate.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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BAKER & MCKENZIE LLP
PATENT DEPARTMENT
2001 ROSS AVENUE, SUITE 2300
DALLAS, TX 75201

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DEC 3 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Kenneth MCCLINTOCK	:	
Application No. 10/455,225	:	DECISION ON PETITION
Filed: June 4, 2003	:	TO WITHDRAW
Attorney Docket No. 24168067.4	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 20, 2008.

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 Kenneth McClintock on behalf of all practitioners of record.

All practitioners of record have been withdrawn.

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

The correspondence of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified by the applicant.

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

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: KENNETH MCCLINTOCK
3796 VINECREST DR.
DALLAS, TX 75229

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FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

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JAN 3 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Hensley et al.	:	
Application No. 10/455,235	:	ON PETITION
Filed: June 5, 2003	:	
Attorney Docket No. OMRF:012US	:	

This is a decision on the petition under 37 CFR 1.181, filed December 6, 2006, requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

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

The above-identified application was held abandoned for failure to timely reply to the Office action mailed June 25, 2004, which set a shortened statutory period for reply of one (1) month. A reply was due on or before July 25, 2004. A Notice of Abandonment was mailed on January 7, 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 July 26, 2004 of 1. Response to Restriction Requirement; and 2. Transmittal. Additionally, petitioner has supplied a copy of the previously mailed correspondence, which bears a certificate of mailing date of July 23, 2004.

The reply acknowledged as having been received in the USPTO on July 26, 2004 (certificate of mailing date of July 23, 2004) is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply was timely received in the USPTO but was apparently lost after receipt thereof.

The serial number listed on was incorrectly listed as 10/445,235. Under current Office procedure, a response that has an incorrect application number is handled in accordance with MPEP 508.03. If a paper having an incorrect application number contains sufficient information to identify the correct application and was timely filed, the holding of abandonment will be withdrawn. In reviewing the papers submitted, it is concluded that the information contained thereon was sufficient to associate the papers with the instant file.

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 1614 for further examination on the merits.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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MCDERMOTT, WILL & EMERY
11682 EL CAMINO REAL
SUITE 400
SAN DIEGO, CA 92130-2047

Mail Date: 04/20/2010

Applicant	: Rudolf H. Aebersold	: DECISION ON REQUEST FOR
Patent Number	: 7655433	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/455,246	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/04/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **3** 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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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

MAIL

JUN 0 2 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
C. James Galley, et al.
Application No. 10/455,248
Filed: June 5, 2003
For: REUSABLE SELF CONTAINED ELECTRONIC DEVICE PROVIDING IN-TRANSIT CARGO VISIBILITY

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed April 1, 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 petition fails to meet requirements (4) and (5). The petition fails to fully discuss the search method employed such as the classes and subclasses searched, etc. Furthermore, the petition fails to provide copies of the references which are discussed as being most closely related to the subject matter encompassed by the claims. Currently there are no copies of any cited prior art of record in this application.

Accordingly, the petition is **DENIED**.

Petitioner may submit a request for reconsideration within **TWO MONTHS** of the date of this decision. Any request for reconsideration should fully discuss the search method employed and include a copy of each of the references most closely related to the subject matter encompassed by the claims.

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

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

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SEP 0 8 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
C. James Galley, et al.
Application No. 10/455,248
Filed: June 5, 2003
For: REUSABLE SELF CONTAINED ELECTRONIC DEVICE PROVIDING IN-TRANSIT CARGO VISIBILITY

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the Request for Reconsideration on petition to make special filed August 2, 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 petition fails to now meets the requirements above.

Accordingly, the petition is **GRANTED**.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA MN 55343-9185

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MAY 11 2006
OFFICE OF PETITIONS

In re Application of
James Joye et al.
Application No. 10/455,253
Filed: June 4, 2003
Attorney Docket No. 018468-001500US

ON PETITION

This is a decision on the petition filed November 30, 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 November 29, 2005 for failure to timely pay the issue fee on or before November 28, 2005. The instant petition and this decision precede the mailing of the Notice of Abandonment.

The issue fee, petition fee and publication fee have been applied. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[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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DAVID B. RITCHIE
THELEN REID & PRIEST LLP
P O BOX 640640
SAN JOSE, CA 95164-0640

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NOV 12 2004

OFFICE OF PETITIONS

In re Application of :
John D. Hyde :
Application No. 10/455,261 : NOTICE
Filed: June 4, 2003 :
Attorney Docket No. IMPJ-0011 :

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.

A copy of the nonfinal Office action mailed on November 8, 2004 has been mailed under separate cover.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE 07/27/09

TO SPE OF ART UNIT 2863

SUBJECT : Request for Certificate of Correction for Appl. No.: 10455262 Patent No.: 7379821 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome

Certificates of Correction Branch

703-756-1574

Thank You For Your Assistance

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

Note your decision on the appropriate box

/J.L./ ☒ **Approved** — All changes apply.

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

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

Comments: _____

DREW A. DUNN
SUPERVISORY PATENT EXAMINER

3/5/09

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Stolowitz Ford Cowger LLP
621 SW Morrison St
Suite 600
Portland, OR 97205

Mail Date: 04/21/2010

Applicant	: Israel Amir	: DECISION ON REQUEST FOR
Patent Number	: 7581019	: RECALCULATION of PATENT
Issue Date	: 08/25/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/455,277	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1064** 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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Lambert & Associates
Suite 200
92 State Street
Boston, MA 02109

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OFFICE OF PETITIONS

In re Application of :
William Kropa :
Application No. 10/455,286 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. 03-004-WK :

This is a decision on the petition under 37 CFR 1.137(b), filed on March 20, 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 May 10, 2005. A Notice of Abandonment was mailed on February 28, 2006.

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, for review of the three (3) sheets of replacement drawings containing Figures 1-3 filed on March 20, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

VIDAS, ARRETT & STEINKRAUS, P.A.
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE, MN 55344

MAILED

APR 12 2010

OFFICE OF PETITIONS

In re Application of :
Maria PALASIS, et al. :
Application No. 10/455,298 : DECISION GRANTING PETITION
Filed: June 6, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **S63.2-13992-US01** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 12, 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 March 22, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 3763 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

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

04 APR 2006

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Alexandria, VA 22313-1450
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

In re Application of	:	
KHAN, Shaharyar et al.	:	
Application No.: 10/544,320	:	DECISION
PCT No.: PCT/US04/00128	:	
Int. Filing Date: 05 January 2004	:	ON PETITION UNDER
Priority Date: 03 January 2003	:	
Docket No.: 60199.0002USWO	:	37 CFR 1.137(b)
For: SiRNA MEDIATED POST-TRANSRIPTIONAL GENE SILENCING OF GENES INVOLVED IN ALOPECIA	:	

Applicants' "Petition For Revival Under 37 CFR §1.137(b)," filed in the above-captioned application on 01 August 2005 is **GRANTED**.

Applicant indicates that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional, as required by 37 CFR 1.137(b)(3). The appropriate national fee and petition fee have been submitted. A terminal disclaimer is not required as the application was filed on or after 08 June 1995. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

A signed oath or declaration has not yet been submitted. The fee for late filing of the search fee, examination fee or oath or declaration will be charged to deposit account no. 13-2725, as authorized.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing in accordance with this decision, including the mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) is required.

Erin P. Thomson

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292
Facsimile: 571-273-0459

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SEP 13 2005

TECHNOLOGY CENTER 3600

John A. Castellano
HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

In re Application of
Corinne Le Buhan
Application No. 10/455,321
Filed: June 6, 2003

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

For: METHOD AND DEVICE FOR RECOGNITION OF THE ORIGIN OF ENCRYPTED DATA BROADCASTING

This is a decision on the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on February 22, 2005.

The petition is **GRANTED** in view of the following evidence of timely filing:

☒ Postcard receipt being dated May 10, 2004.

☐ 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 _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for withdrawal of the abandonment and then to the examiner for prompt action.

KJD/js 7/29/05

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 8-6-08 **Paper No.:** _____

TO SPE OF : ART UNIT 3662

SUBJECT : Request for Certificate of Correction on Patent No.: 7234310 (10/455321

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.

Order & Inventor's name (A/S/A/P) Eva James

Thank You For Your Assistance

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

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

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

Comments:

_____

_____

_____

_____

_____

Thomas D. Lucas — **SPE**

3662 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MONTREAL QC H3B 3P4 CA CANADA

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OFFICE OF PETITIONS

In re Application of	:	
Bolduc, Normand	:	
Application No. 10/455,337	:	ON PETITION
Filed: June 6, 2003	:	
Attorney Docket No. L80003783US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 14, 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

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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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

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OFFICE OF PETITIONS

In re Application of Araki :
Application No. 10/455,413 : Decision on Petition
Filing Date: June 6, 2003 :
Attorney Docket No. Q75878 :

This is a decision on the petition under 37 CFR 1.181, filed November 7, 2006, to withdraw the holding of abandonment.

The petition is **granted.**

The Office mailed a final Office action on April 10, 2006.

The Office did not receive a reply to the final Office action.

A Notice of Abandonment was mailed October 27, 2006.

The instant petition was filed November 7, 2006. The petition establishes non-receipt of the final Office action. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 1752 will be informed of the instant decision. Thereafter, the Technology Center's technical support staff or the examiner will mail a new final Office action. The time period for responding to the new final Office action will be set to run from the mailing date of the new final Office action.

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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HUSKY INJECTION MOLDING SYSTEMS, LTD
CO/AMC INTELLECTUAL PROPERTY GRP
500 QUEEN ST. SOUTH
BOLTON ON L7E 5S5 CA CANADA

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JUL 26 2006

OFFICE OF PETITIONS

In re Application of :
Elliot :
Application No. 10/455,469 :
Filed: June 5, 2003 :
Attorney Docket No. H-695-0-US :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 25, 2006 (certificate of mailing date April 20, 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 October 26, 2005. Accordingly, this application became abandoned on January 27, 2006. A Notice of Abandonment was mailed on March 28, 2006.

Applicant has 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 October 26, 2005 Notice of Allowance and Fee(s) Due, and the petition fee.

The petition is **granted**.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This application is being forwarded to Publishing Division for processing into a patent.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: HUSKY INJECTION MOLDING SYSTEMS, LTD
288 NORTH ROAD
MILTON, VT 05468

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

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In re Application of :
Napoleone FERRARA et al. :
Application No. 10/455,470 : DECISION ON PETITION
Filed: June 05, 2003 :
Attorney Docket No. **12279-450-999** :

This is a decision on a renewed petition to revive the above-identified application under the 37 CFR 1.137(b), filed on November 30, 2009, and the petition for expedited consideration thereof under 37 CFR 1.182, filed on January 28, 2010.

The petition for expedited consideration is **GRANTED**.

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

This application became abandoned for failure to timely pay the issue and publication fees on or before November 27, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed August 27, 2009. Accordingly, the date of abandonment of this application is November 28, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and the publication fee of $300, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay. 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 the Office of Data Management for processing into a patent.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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DW 02-04

Paper No. 5

KATHLEEN K. BOWEN CO. LPA
311 HILLBROOK
CUYAHOGA FALLS OH 44223

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FEB 0 6 2004

OFFICE OF PETITIONS

In re Application of	:	
Meisel et al.	:	
Application No. 10/455,481	:	DECISION DISMISSING
Filed: 6 June, 2003	:	PETITION
Attorney Docket No. 200203U	:	

This is a decision on the petition under 37 CFR 1.10(d) filed on 8 January, 2004, requesting that the above-identified application be accorded a filing date of 5 June, 2003, instead of the presently accorded filing date of 6 June, 2003.

The petition is **DISMISSED**.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on 5 June, 2003, pursuant to the requirements of 37 CFR 1.10.

Paragraph (a) of 37 CFR 1.10 states that:

> Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. 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.[1] (emphasis added)

Paragraph (d) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was

[1] See 37 CFR 1.6(a).

> 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 correspondence was deposited in "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. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

The petition lacks the showing required by item (3) above. In support, petitioners rely upon the sales receipt as evidence that the application was accepted by the USPS on the requested date. However, the sales receipt indicates only that petitioners' paid for the Express Mail shipment on 5 June, 2003, not that the Express Mail envelope was accepted by the USPS as deposited on that date.

In view of the showing of record, petitioners should request a letter from the USPS explaining the discrepancy between the date on the sales receipt and the "date-in" on the Express Mail envelope. The letter should state that, according to USPS records, the Express Mail package bearing label No. EU947945382US was in fact deposited with the USPS in Express Mail Post Office to Addressee Service on 5 June, 2003, and that the "date-in" of 6 June, 2003, was entered on the Express Mail label in error, and explain the apparent cause of the error.

Alternatively, petitioners may provide evidence that came into being after deposit and within one business day of deposit of the application in Express Mail. Such evidence may include a mail log with an entry made after the application was deposited in Express Mail, or a letter to the client sent after the mailing of the application confirming the mailing of the application.

Accordingly, the petition is dismissed. However, such dismissal is without prejudice to reconsideration pending submission of a statement from the USPS or other proper evidence showing that the application was accepted by the USPS on 5 June, 2003.

The application file will be retained in the Office of Petitions for TWO (2) MONTHS to await petitioner's reply to this decision. If no reply is received within two (2) months, the application will be forwarded to the Office of Initial Patent Examination for further processing with the presently accorded filing date of 6 June, 2003.

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

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

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

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries may be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Rev 03-04

Paper No. 7

KATHLEEN K. BOWEN CO. LPA
311 HILLBROOK
CUYAHOGA FALLS OH 44223

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MAR 0 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Meisel et al.	:	
Application No. 10/455,481	:	DECISION GRANTING
Filed: 5 June, 2003	:	PETITION
Attorney Docket No. 200203U	:	

This is a decision on the renewed petition under 37 CFR 1.10(d) filed on 1 March, 2004, requesting that the above-identified application be accorded a filing date of 5 June, 2003, instead of the presently accorded filing date of 6 June, 2003.

The petition is **GRANTED**.

Petitioners alleges that the application was deposited in Express Mail service on 5 June, 2003. Although the USPS Express Mail Customer Label bears a "date-in" of 6 June, 2003, petitioners have supplied a letter from Jill Nester, Supervisor, Customer Services for the Cuyahoga Falls Post Office stating that, according to USPS records, the package bearing Express Mail No. EU947945382US (the same Express Mail tracking number found on the itemized transmittal sheet accompanying the original application papers) was deposited with the USPS on 5 June, 2003.

In view of the evidence present in the file, 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 5 June, 2003.

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

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to **5 June, 2003.**

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KENYON & KENYON LLP
RIVERPARK TOWERS, SUITE 600
333 W. SAN CARLOS ST.
SAN JOSE, CA 95110

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JUL 07 2008

OFFICE OF PETITIONS

In re Application of Wu et al. :
Application No. 10/455,507 : Decision on Petition
Filing Date: June 4, 2003 :
Attorney Docket No. 12553/110 :

This is a decision on the petition under 37 CFR 1.181 filed March 31, 2008, requesting the Office withdraw the holding of abandonment.

The petition is **granted.**

A decision by the Board of Patent Appeals and Interferences affirmed the rejection of the claims by the examiner. The decision was mailed June 19, 2007.

A Request for Continued Examination and a submission were timely filed on Monday, August 20, 2007.

The Office mailed a Notice of Abandonment on August 24, 2007. The Notice stated the application was abandoned because the time period for seeking court review of the Board decision had expired and no claims had been allowed.

On November 29, 2007, the Office mailed a non-final Office action despite the fact the holding of abandonment had not been officially withdrawn.

The instant petition and a reply to the November 29, 2007 Office action were filed on March 31, 2008.

The instant petition correctly asserts the holding of abandonment was mailed in error. The RCE filed August 20, 2007, was timely, effectively withdrew the appeal, and reopened prosecution.

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

Technology Center Art Unit 2627 will be informed of the instant decision and the amendment filed March 31, 2008, will be considered by the examiner in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 7

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 MARKET STREET, SUITE 540
SAN FRANCISCO, CA 94105

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JUN 0 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Marcus et al.	:	GRANT OF PETITION
Application No. 10/455,540	:	UNDER 37 CFR 1.78(a)(3)
Filed: June 4, 2003	:	
Attorney Docket No. EDU.024	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 20, 2004, to accept an unintentionally delayed claim for the benefit of priority based on the prior-filed applications set forth in the concurrently filed amendment.

The petition is **granted**.

When an application is filed on or after November 29, 2000, benefit claims under 35 U.S.C. 119(e), 120, 121 and 365(c) must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. For the instant application, the above period of time ended on October 4, 2003. The priority claims at issue were not made by this date. However, petitioner has submitted a petition under 37 CFR 1.78(a)(3).

37 CFR 1.78(a)(3) states,

If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

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

Petitioner has satisfied the above requirements for relief under 37 CFR 1.78(a)(3).

The granting of this petition is not a determination that petitioner is actually entitled to the benefit of the filing date of the prior-filed applications, but is only a determination that the Office will allow petitioner to file untimely claims for priority. The examiner will, in due course, consider any priority claims and determine the extent to which the application is entitled to an earlier filing date.

A corrected Filing Receipt, which includes the priority claims accompanies this decision on petition.

A proper domestic priority claim must be part of the first sentence of the specification or part of an Application Data sheet. **Petitioner may wish to verify that *proper* priority claims were filed in the two previous applications.** Where an application claims a benefit under 35 U.S.C. 120 of a chain of applications, every intermediate application must also make a reference to the first (earliest) application and every application after the first application and before such intermediate application. MPEP Section 201.06(d).

This application is being forwarded to Technology Center Art Unit 3714 for appropriate action on the amendment submitted January 20, 2004, including consideration by the examiner of the claims for priority. **The examiner should consider the priority claims and determine the extent to which the application is entitled to an earlier filing date based on the prior-filed applications.**

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

Charles Pearson
Director
Office of Petitions

Attached: 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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PARRIS S. WELLMAN
52 HIGHLAND STREET
READING MA 01867

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OCT 20 2006

OFFICE OF PETITIONS

In re Application of	:	
Parris S. Wellman	:	
Application No. 10/455,543	:	DECISION GRANTING PETITION
Filed: June 5, 2003	:	UNDER 37 CFR 1.137(b)
For: SUBSTANTIALLY INERTIA FREE HEMODIALYSIS	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 8, 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 (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Restriction Requirement of June 28, 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 3761.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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111 NORTH MARKET STREET, SUITE 1010
SAN JOSE, CA 95113

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MAR 16 2006

OFFICE OF PETITIONS

In re Application of	:	
Petro Estakhri	:	DECISION ON PETITION UNDER
Application No. 10/455,550	:	37 CFR 1.313(a)
Filed: June 4, 2003	:	
Attorney Docket No. LEXAR-81CUS	:	

This is a decision on the petition under 37 CFR 1.313(a), filed March 13, 2006, requesting withdrawal of the above-identified application from issue.

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

A review of the file record discloses that a Notice of Allowance was mailed on February 28, 2006, with the issue fee being due on or before May 30, 2006. There is no indication that the issue fee has to date been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP 706.07(h)(IX).

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.

The matter is being referred to Technology Center AU 2185 for appropriate processing of the RCE filed March 13, 2006, and for consideration of the concurrently filed Information Disclosure Statement.

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
www.uspto.gov

PLANTRONICS, INC.
IP Department/Legal
345 ENCINAL STREET
P.O. BOX 635
SANTA CRUZ CA 95060-0635

COPY MAILED

MAY 12 2008

In re Application of :
Osman Isvan :
Application No. 10/455,554 : DECISION ON PETITION
Filed: June 4, 2003 :
Attorney Docket No. 01-7079 :

This is a decision on the petition, filed March 24, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of June 18, 2007, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before December 18, 2007.

Petitioner states that a timely reply was mailed via certificate of mailing on December 18, 2007, which included the following papers: RCE, amendment, claims, request for three month extension of time fee and authorization to charge the RCE and extension of time fee. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated December 18, 2007 which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), 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 U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

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

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

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

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of June 18, 2007 is hereby withdrawn and the application restored to pending status.

The address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on December 18, 2007.

This application is being referred to Technology Center AU 2615 for appropriate action in the normal course of business on the reply received with petition.

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: Michael Rodriguez
Plantronics, Inc.
365 Encinal Street
Santa Cruz, CA 95060

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. 7

VIERRA MAGEN MARCUS HARMON & DENIRO
685 MARKET STREET, SUITE 540
SAN FRANCISCO, CA 94105

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APR 0 7 2004

OFFICE OF PETITIONS

In re Application of
Brian I. Marcus et al
Application No. 10/455,573
Filed: June 4, 2003
Attorney Docket No. EDU.023

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 20, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

---

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The instant pending application was filed on June 4, 2003, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

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 nonprovisional applications.

Karen Creasy

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 MARKET STREET, SUITE 540
SAN FRANCISCO, CA 94105

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MAY 2 0 2004

OFFICE OF PETITIONS

In re Application of
Brian I. Marcus et al
Application No. 10/455,573
Filed: June 4, 2003
Attorney Docket No. EDU.023

: DECISION GRANTING PETITION
: UNDER 37 CFR 313(c)(2)

This is a decision on the petition, filed May 17, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 26, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3714 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

KUNZLER & ASSOCIATES
8 EAST BROADWAY
SUITE 600
SALT LAKE CITY UT 84111

In re Application of
KAWANO, et al.
Application No. 10/455,603
Filed: June 04, 2003
Attorney Docket No. JP9-2002-0079

: 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 November 14, 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 October 13, 2006 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to Patricia Volpe at 571-272-6825.

This application is being referred to Technology Center AU 2186 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

[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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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 6

Ivan S. Kavrukov
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036

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APR 16 2004

OFFICE OF PETITIONS

In re Application of :
David Gelernter, Randy Prager :
and Eric Freeman :
Application No. 10/455,607 :
Filing Date: June 4, 2003 :
Attorney Docket No. 1584/67570-A :
Title: STREAM-BASED INFORMATION :
MANAGEMENT SYSTEM :

This is in response to the petition under 37 CFR 1.47(a), filed April 1, 2004.

The petition is **DISMISSED**.

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

The above-identified application was filed on June 4, 2003, without an executed oath or declaration. Accordingly, on August 29, 2003, the Office mailed a "Notice to File Missing Parts of Application," requiring, inter alia, an executed oath or declaration and the surcharge under § 1.16(e) for its late filing. This Notice set a two-month period for reply, with extensions of time obtainable under § 1.136(a).

Applicants replied with inter alia the instant petition under § 1.47; payment of the petition fee and of the late surcharge; and a declaration executed by all of the joint inventors except inventor Randy Prager. This reply was made timely by an accompanying petition for an extension for response within the fifth month (and fee). Rule 47 applicants assert that status under § 1.47 is proper because joint inventor Prager did not respond to Applicants' letter requesting his signature on the Declaration. In support thereof, applicants submitted a declaration of facts of Lou Nemeth.

A grantable petition under 37 CFR § 1.47(a) requires: (1) an acceptable oath or declaration in compliance with 37 C.F.R.

§ 1.63 and 1.64 or 1.175; (2) proof that the non-signing inventor cannot be found or reached after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The petition included payment of the petition fee; the declaration of facts to show unavailability of inventor Prager; and a statement of the last known address of the non-signing inventor.

However, the petition is not grantable because requirement (2) has not been satisfied. Petitioner has not shown that inventor Prager has refused to join in the application as required by § 1.47. Before a refusal can be alleged, applicant must demonstrate that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). On declaration of facts, Lou Nemeth states only that a Declaration and Assignment forms were sent to the inventors. A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

Alternatively, petitioner has not shown that inventor Prager cannot be found or reached after diligent effort to be presented with all of the application papers. The petition does not include adequate evidence to support a conclusion that diligent efforts have been made to find or reach inventor Prager to have him join in this application. Having been unsuccessful in contacting inventor Prager by mail, there is no indication that Rule 47 applicants attempted to determine inventor Prager's forwarding address, and to send the application papers to that address for consideration by inventor Prager. See MPEP 409.03(d). If attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through E-mail, a new telephone number, or the Internet continue to fail, then applicants will have provided the necessary proof required under 37 CFR 1.47 that the inventor cannot be reached or found after diligent effort. Details of the efforts to locate non-signing inventor Prager 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 searches.

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
2011 South Clark Place
Crystal Plaza Two Lobby
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

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

APR 19 2005

Allison Tulino
Sughrue Mion, PLLC
2100 Pennsylvania Ave. NW
Washington DC 20037-3213

In re Application of: Shuichi Aruga et al	:	PETITION TO WITHDRAW
Application No. 10/455,618	:	FINALITY OF ACTION
Filed: June 6, 2003	:	UNDER
Attorney Docket No.: Q75939	:	37 C.F.R. 1.181
For: METHOD FOR REPLENISHING CONSUMABLES AND SYSTEM FOR MANAGING THE REPLENISHMENT OF CONSUMABLES	:	

This is in response to applicant's petition filed on October 29, 2004 to have the Finality of the September 29, 2004 Office action withdrawn.

The petition is **DISMISSED.**

The petitioner argues that the September 29, 2004 Office action contained a new grounds of rejection which covered claims that had not been significantly changed in the amendment dated July 1, 2004. As such, petitioner urges that the Office action should not have been made final.

A review of the file record indicates that a Request for Continued Examination (RCE) was filed on January 28, 2004. Since the filing of the RCE reopens prosecution the issue of whether the Finality of the September 29, 2004 Office action was proper is deemed moot. Also, a non-final Office action was mailed on March 22, 2005.

Accordingly, the petition is dismissed as moot. A response to the Office action of March 22, 2005 is due on June 22, 2005.

Summary: ***Petition DISMISSED***

John J. Love, Director
Patent Technology Center 3600
(703) 308-1020
RPO: 2/10/05

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS MN 55415-1002

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AUG 0 5 2005

OFFICE OF PETITIONS

In re Application of :
Joel W. Pfister et al :
Application No. 10/455,624 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. S522.12-0013 :

This is a decision on the petition, filed August 1, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

The examiner of Technology Center AU 3632 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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P.O. Box 1450
Alexandria, VA 22313-1450
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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
170 WOOD AVENUE SOUTH
ISELIN, NJ 08830

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JAN 19 2007

OFFICE OF PETITIONS

In re Application of	:	
McIntyre et al.	:	
Application No. 10/455,632	:	ON PETITION
Filed: June 6, 2003	:	
Attorney Docket No. 051252-5211 (02)	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 10, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of 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.

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

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) 272-3282.

Liana Walsh
Petitions Examiner
Office of Petitions

Cc:

CANAVAN & MONKA LLC
250 STATE ROUTE 28, SUITE 207
BRIDGEWATER, NJ 08807

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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CARTER J. WHITE LEGAL DEPARTMENT
M-I L.L.C.
5950 NORTH COURSE DRIVE
HOUSTON TX 77072

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JUL 0 6 2006

OFFICE OF PETITIONS

In re Application of :
Horton et al. :
Application No. 10/455,636 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. PA-00119US :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 25, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the Issue Fee Transmittal with payment of the issue 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.

This matter is being referred to the Publishing Division for processing into a patent.

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

Liana Chase
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

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

Mail Date: 07/15/2010

Applicant	: Kaushik P. Biswas	: DECISION ON REQUEST FOR
Patent Number	: 7653745	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/455,640	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/04/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1109** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6811747
Issue Date: November 2,2004
Application No. 10455642
Filed: June 4,2003
Attorney Docket No. BIOQUST.023

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

This is a decision on the electronic petition, filed October 9,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 9,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6811747	2004-11-02	10455642	2003-06-04	2200

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	/Larry K. Roberts/	Date (YYYY-MM-DD)	2009-10-09
Name	Larry K. Roberts	Registration Number	28464

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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MAR 04 2009

OFFICE OF PETITIONS

Computer Packages, Inc.
414 Hungerford Drive
Third Floor
Rockville, MD 20850

In re Patent No. 6,853,926 :
Issue Date: February 8, 2005 :
Application No. 10/455,662 : NOTICE
Filed: June 5, 2003 :
Attorney Docket No. 881-5 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

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

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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JUL - 8 2005

In re Application of	:	
Justin Voden	:	
Application No. 10/455,666	:	DECISION ON PETITION
Filed: June 5, 2003	:	
For: ROTARY GAME TABLE	:	

This is a decision on the petition to make special filed on December 16, 2004. The petition is submitted pursuant to the practice established in MPEP § 708.02(II) "Infringement." The $130.00 petition fee has been received.

The petition is granted.

A review of the petition shows that petitioners have satisfied all of the requirements of the above-cited MPEP section. Accordingly, the examiner will treat this application as special throughout its prosecution. Prior to the first action on the merits, the examiner will conduct a rigorous search for potentially interfering applications. The interference search will be brought up to date prior to each successive action.

The Supervisory Patent Examiner of Patent Examining Art Unit 3711 will be notified of this decision, and will inform the assigned examiner to take action not inconsistent there with this decision.

PETITION GRANTED.

Richard A. Bertsch, Director
Technology Center 3700

Timothy J. Ziolkowski
Ziolkowski Patent Solutions Group, Inc.
14135 N. Cedarburg Road
Mequon, WI 53097-1416

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/455,666	06/05/2003	Justin L. Voden	JLV74620.094	5901

26629 7590 06/01/2010

ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (ZPS)
136 S WISCONSIN ST
PORT WASHINGTON, WI 53074

EXAMINER	
ARYANPOUR, MITRA	

ART UNIT	PAPER NUMBER
3711	

NOTIFICATION DATE	DELIVERY MODE
06/01/2010	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):

info@zpspatents.com
rlt@zpspatents.com
klb@zpspatents.com

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ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (ZPS)
136 S WISCONSIN ST
PORT WASHINGTON WI 53074

In re Application of:	
VODEN, JUSTIN L.	DECISION ON PETITION
Serial No.: 10/455,666	FOR WITHDRAWAL
Filed: Jun. 5, 2003	TERMINAL DISCLAIMER
Attorney Docket: JLV74620.094	
Title: ROTARY GAME TABLE	

This is a decision on petition filed on March 15, 2010 by which petitioner requests withdrawal of the terminal disclaimer filed on February 10, 2005 to overcome the rejection of claims 1, 10, 15, 17 and 26 as stated in the final rejection of December 10, 2004. The petition is considered as pursuant to 37 CFR 1.181, and no fee is required. The petition fee of $00.00 will be refunded upon written request.

The petition is **DISMISSED as UNTIMELY**.

In the petition, petitioner requests the Director to allow the applicant to withdraw the terminal disclaimer filed on February 10, 2005 because the applicant disagrees with the Obvious Double patenting rejection as sated in the final rejection of December 10, 2004. In particular, petitioner believes that the examiner's obviousness-type double patenting rejection of claims is insufficient. Petitioner also gave a few examples of why claims 1, 5, and 8 of U.S. Pat. 6,764,409 do not anticipate or render obvious claim 1 of the present invention. Petitioner requests reconsideration and withdrawal of the double patenting rejection of claims in view of any of patent claims of U.S. Pat. 6,764,409.

Discussion and Analysis

A review of the record shows that the instant petition of March 15, 2010 was filed more than five years after the mailing date of the final rejection of December 10, 2004. It must be noted that the petitioner is complaining about the propriety of the Obvious Double patenting rejection of claims

1, 10, 15, 17 and 26 in the final rejection of December 10, 2004. Pursuant to 37 CFR 1.181(f)[1], the petition must be filed within two months from the action complained of. Since the petition was not timely filed, the requested withdrawal of terminal disclaimer filed on February 4, 2005 to overcome the Obvious Double patenting rejection as stated in the final rejection of December 10, 2004 will not be granted.

In the petition, petitioner disagrees with the examiner's Obvious Double patenting rejection as stated in the final rejection of December 10, 2004. This disagreement with the examiner as set forth on pages 2-20 of the petition is clearly appealable and not petitionable matter. The examiner can not be compelled to ignore a reference in order to gain patentability. Therefore, the Director will not allow the applicant to withdraw the terminal disclaimer filed on February 10, 2005. The Director also does not have authority to compel an examiner to ignore prior art when it is proper prior art for Obvious Double patenting rejection. That would be like directing an examiner to ignore prior art for Obvious Double patenting rejection so the application could issue without a proper terminal disclaimer. The US patent 6,764,409 is a reference and available for use as Obvious Double patenting rejection. It is also necessary for the presumption of validity that underlies the US patent system. The requested withdrawal of the terminal disclaimer is not for the Director to approve. This is inappropriate for petition under 1.181 which is to petition a patentability decision made by an examiner. As such, the petition will not be decided by this decision under 37 CFR § 1.181(a) (1). The issue presented here by petitioner is clearly directed to the propriety of the examiner's rejection of the claims under Obvious Double patenting rejection. The question of whether claims should be rejected under Obvious Double patenting rejection or not is an appealable issue under 37 CFR 41.31(a) (1). After the review of the final Office action of December 10, 2004, the examiner's final rejection does comply with the USPTO rules and regulations. The final rejection of December 10, 2004 stands as part of the prosecution history. It is further noted that the Obvious Double patenting rejection as stated in the final rejection of December 10, 2004 was overcome by the terminal disclaimer filed on February 10, 2005. The Obvious Double patenting rejection was later withdrawn by the examiner in view of the terminal disclaimer. After two appeals to the Board, the application is now allowed by the examiner on March 17, 2010. Now, there is no basis to allow the applicant to withdraw the terminal disclaimer filed more than five years ago. The requested relief will not be granted. Petitioner is reminded that the period to pay the issue fee remains unchanged.

Conclusion

For the reasons as stated above, petitioner's request to withdraw the terminal disclaimer filed on February 10, 2005 to overcome the Obvious Double patenting rejection of claims is dismissed as untimely. The requested relief is also an appealable and not a petitionable matter.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3711 awaiting the applicant's payment of issue fee. It must be noted that the mere filing of a petition will not stay any period for reply that may be running against the application, nor act

[1] 37 CFR 1.181(f): The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

as a stay of other proceedings. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181".

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED AS UNTIMELY.

Robert Olszewski, Director
Technology Center 3700

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St. Paul, MN 55133-3427

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MAY 12 2005

OFFICE OF PETITIONS

In re Application of	:	
Robert J. Devoe, et al.	:	
Application No. 10/455,675	:	DECISION ON PETITIONS
Filed: June 5, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 58622US002	:	AND UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed December 17, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§120, and 119(e) for the additional benefit of prior-filed nonprovisional Application No. 10/311,041, filed December 12, 2002 and to provisional Application No. 60/211,703, filed June 15, 2000, set forth in the concurrently filed amendment.

The petitions are **DISMISSED**.

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

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

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

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

The petition fails to comply with item (1) above.

A reference to add the prior-filed applications on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a substitute amendment[1] deleting the improper incorporation by reference statement is required.

As authorized, the $1370 fee required by 37 CFR 1.78(a)(3)(ii) and 37 CFR 1.78(a)(6)(ii) will be charged to petitioner's Deposit Account No. 13-3723.

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

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

[1] *Note* 37 CFR 1.121

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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 Marianne Jenkins at (571) 272-3223.

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

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In re Application of	:	
Robert J. Devoe, et al.	:	
Application No. 10/455,675	:	DECISION ON PETITION
Filed: June 5, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 58622US002		

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 17, 2004, to accept an additional unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to ~~the~~ prior-filed nonprovisional ~~applications~~ application set forth in the amendment filed concurrently with the instant petition. No. 10/311,041, filed 12-12-02 and to Prov. App No. 60/311703, filed 6-15-02 as

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) above.

if you use above-noted, you also need to include POA was.

A reference to add the above-noted prior-filed applications on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

As authorized, the $1370 fee required by 37 CFR 1.78(a)(3)(ii) will be charged to petitioner's Deposit Account No. 13-3723.

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

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[1] *Note* 37 CFR 1.121

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

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

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JAN 27 2006

OFFICE OF PETITIONS

In re Application of :
Robert J. DEVOE et al. :
Application No. 10/455,675 : DECISION DISMISSING PETITIONS
Filed: June 5, 2003 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 58622US002 :

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed July 21, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the additional benefit of the prior-filed nonprovisional Application No. 10/311,041, filed December 12, 2002 and to provisional application No. 60/211,703, filed June 15, 2000, 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 Commissioner may require additional where there is a question whether the delay was unintentional.

The 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 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Rev. 2, May 2004, Reference to Prior Application. The amendment filed August 16, 2005 fails to state the relationship of Application Nos. 10/263,116, 10/263, 013, 10/262,927, filed October 2, 2002 and Application No. 10/315,756, filed December 9, 2002, to this application and is therefore unacceptable.

Additionally, the amendment submitted concurrently with the petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment does not include an instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs and, as such, does not comply with 37 CFR 1.121.

For the above-stated reasons, the petition is **DISMISSED**

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and a substitute amendment or an Application Data Sheet (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5) and (6)) to correct the above matters are required.

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

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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 David Bucci at (571) 272-7099.

Brian Hearn
Petitions Examiner
Office of Petitions

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APR 12 2006

OFFICE OF PETITIONS

In re Application of :
Robert J. DEVOE et al. :
Application No. 10/455,675 : DECISION ON PETITIONS
Filed: June 5, 2003 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 58622US002 :

This is a decision on the petitions under 37 CFR 1.78(a)(3) and 1.78(a)(6), filed March 20, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the additional benefit of the prior-filed nonprovisional Application No. 10/311,041, filed December 12, 2002 and to provisional Application No. 60/211,703, filed June 15, 2000, set forth in the concurrently filed amendment.

The petitions are **GRANTED.**

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

> **(1)** the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The prior formerly pending nonprovisional application No. 10/311,041 was filed during the pendency of International Application No. PCT/US01/19164, and the prior formerly pending International Application No. PCT/US01/19164 was filed on June 14, 2001, which is within twelve months of the filing date of the prior-filed provisional Application No. 60/211,703, which was filed on June 15, 2000, for which priority is claimed. A reference to the prior-filed nonprovisional and provisional applications has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the prior nonprovisional application through which benefit is sought. See 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) and (a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an

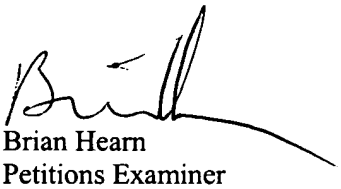
unintentionally delayed claim of benefit to prior-filed nonprovisional application No. 10/311,041 and provisional application No. 60/211,703 is granted.

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

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

Any questions concerning this matter may be directed to 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 Technology Center Art Unit 1752 for appropriate action on the amendment submitted March 20, 2006, including consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.



Brian Hearn
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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COMMISSIONER FOR PATENTS
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Paper No.

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

COPY MAILED

FEB 27 2004

OFFICE OF PETITIONS

In re Application of	:	
Lee et al.	:	
Application No. 10/455,679	:	DECISION ON
Filed: June 5, 2003	:	PETITION
Attorney Docket No. 5649-1096	:	

This is a decision on the "PETITION TO ACCORD THE PROPER FILING DATE," requesting that the above-identified application be accorded a filing date of June 5, 2003, rather than the presently accorded filing date of June 6, 2003.

Petitioner maintains that the above-identified application was deposited in the United States Postal Service (USPS) Express Mail Service on June 5, 2003, pursuant to the requirements of 37 C.F.R. § 1.10; however, the USPTO failed to accord the application a filing date as of the "date-in" or deposit date with the USPS. In support thereof, petitioner submitted true and accurate copies of the UTILITY PATENT APPLICATION TRANSMITTAL LETTER; the "Express Mail" mailing label, No. EV353595503; and the Official filing receipt mailed August 7, 2003.

The instant petition was filed promptly within the meaning of § 1.10. A review of the evidence further reveals that: The transmittal letter was among the papers received in the Office in the Express Mail package. The transmittal identifies the papers that were received in the Office in the Express Mail package. Furthermore, the transmittal bears the Express Mail mailing label number EV353595503US. Thus, petitioner has shown that the Express Mail mailing label number was placed on the correspondence prior to the original mailing.

Moreover, a review of the "Express Mail" mailing label No. EV353595503US reveals that the package was sent via the USPS "Express Mail Post Office to Addressee" service. Although there is no handwritten date-in on the label, the label bears a USPS postmark of June 5, 2003.

In view thereof, the petition is **GRANTED**.

No petition fee is required and none has been charged.

The Office of Initial Patent Examination has been advised of this decision granting the filing date petition, and it has been requested that the **filing date be corrected to June 5, 2003** and that a **corrected filing receipt be mailed**.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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SEP 17 2003

Paper No. 4

In re Application of	:	
John Patrick	:	
Serial No. 10/455,705	:	DECISION ON PETITION
Filed: June 5, 2003	:	TO MAKE SPECIAL
For: HEATED RAZOR AND ELECTRIC SHAVER	:	

Applicant's petition, filed June 5, 2003, seeks to have this application made special pursuant to the Accelerated Examination Program. The petition is GRANTED.

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

Applicant is advised that the examiner's search will be restricted to the subject matter encompassed by the claims. In the event that the application receives a first action rejection, applicant is encouraged to arrange for an interview with the examiner, and to provide the examiner with a working copy of any proposed amendment one working day prior to the interview. Any amendment filed in response to a first action rejection which would require broadening of the field of search will be treated as an improper response.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Christopher B. Fagan, Esq.
Fay, Sharpe, Fagan, Minnich & McKee LLP
1100 Superior Avenue, 7th Floor
Cleveland, OH 44114-2518

24 SEP 200

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SCHWEGMAN, LUNDBERG, WOESSNER, & KLUTH
P.O. Box 2938
Minneapolis, MN 55402

In re Application of:	:	
Hahn, Klaus, M., et al.	:	DECISION ON PETITION TO
U.S. Application No.: 10/455,713	:	REVIVE ABANDONED
Date of Submission: 03 June 2003	:	APPLICATION UNDER 37
Attorney's Docket No.: 1361.007US2	:	CFR 1.137(b)
For: LABELED PEPTIDES, PROTEINS AND ANTIBODIES AND PROCESSES AND INTERMEDIATES USEFUL FOR THEIR PREPARATION	:	

The petition to revive under 37 CFR 1.137(b) filed 03 June 2003 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "[a]bandonment of the international application was unintentional and the entire delay in filing the U.S. national stage application was also unintentional" meets the requirements of 37 CFR 1.137(b)(3).

International application PCT/US01/22194 became abandoned as to the United States of America after midnight on 13 January 2003 for failure to pay the basic national fee. The filing of the present continuing application under 35 U.S.C. 111 is accepted as the appropriate response under 37 CFR 1.137(b). See MPEP § 711.03(c). International application PCT/US01/22194 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuing application number 10/455,713.

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

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

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Paper No. 3

BROWDY AND NEIMARK
624 NINTH STREET NW
WASHINGTON, DC 20001-5303

COPY MAILED

NOV 17 2003

OFFICE OF PETITIONS

In re Application of :
Tomoyuki Nishimoto et al :
Application No. 10/455,730 : NOTICE
Filed: June 6, 2003 :
Attorney Docket No. NISHIMOTO7 :

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 1761.

Wan Laymon
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
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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
10/455,737	06/04/2003	2664	575	248588005US1	12	21	6

CONFIRMATION NO. 4997

CORRECTED FILING RECEIPT

OC000000011873888

25096
PERKINS COIE LLP
PATENT-SEA
P.O. BOX 1247
SEATTLE, WA 98111-1247

Date Mailed: 02/10/2004

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)

David Wayne Bonn, Everett, WA;

Domestic Priority data as claimed by applicant

This application is a CON of 09/382,568 08/25/1999 PAT 6,597,661

Foreign Applications

If Required, Foreign Filing License Granted: 07/17/2003

Projected Publication Date: 02/19/2004

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Network packet classification

Preliminary Class

370

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

GRANTED

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

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

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

NOT GRANTED

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

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

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OCT 14 2005

OFFICE OF PETITIONS

In re Application of :
Douglas Mclean et al :
Application No. 10/455,744 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 238821USOCONT :

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

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on August 22, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 1765 will consider the request for continued examination under 37 CFR 1.114.

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

---

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

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Paper No. 7

GREENLEE WINNER AND SULLIVAN, P.C.
4875 PEARL EAST CIRCLE, SUITE 200
BOULDER, CO 80301

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MAR 1 0 2005

OFFICE OF PETITIONS

In re Application of :
Peter Chen :
Application No. 10/455,751 : ON PETITION
Filed: June 4, 2003 :
Attorney Docket No. 74-02 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 18, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed August 5, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 6, 2003.

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

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

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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AUG 08 2006

CHARLES R. REEVES
WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

In re Application of
BINDSEIL, JAMES J.
Serial No.: 10/455,760
Filed: June 5, 2003
Docket: 4002-3371
Title: FUSION IMPLANT AND METHOD MAKING SAME

DECISION ON PETITION TO WITHDRAW FINALITY OF REJECTION AS PREMATURE UNDER 37 CFR 1.181

This is a decision on the petition filed on October 3, 2005 by which petitioners request supervisory review and withdrawal of the finality of the Office Action dated July 27, 2005. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is **dismissed**.

A review of the relevant prosecution history shows that the applicant filed the original claims on June 5, 2003. On January 11, 2005, the examiner rejected all of the elected claims, except Claims 33-36 which were objected to, stating "Claims 33-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." The applicant subsequently filed an amendment on May 9, 2005 which added Claims 89-91. The applicant intended to rewrite the original allowable Claim 33 as an independent Claim 89, and to rewrite the original Claims 33-34 as Claims 90-91 dependant on new Claim 89. On July 27, 2005 the examiner issued a final Office Action, stating *inter alia* that Claims 89-91 are anticipated by Leroux et al., U.S. Patent No. 6,478,822[1].

On October 3, 2005, the applicant filed the current petition requesting a withdrawal of the finality of the previous Office Action. The petitioner is of the opinion that the Final Office Action was premature. In particular, the petitioner states that Claims 89-91 could not have necessitated new grounds of rejection since "These claims were effectively pending previously as claims 33-35, and were rewritten as claims 89-91."

[1] Newly cited reference added in the Final rejection of claims 89-91.

Analysis of Application Record

MPEP 706.07(a) states in relevant part: "Under present practice, second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims* nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." (*Emphasis added*).

The issue presented in the current petition is whether the new Claims 89-91 changed the scope of the original allowed claims 33-35 and the new ground of rejection in the Final Office action was necessitated by applicant's amendment of claims 33-35. Since new Claims 90 and 91 are dependent on new Claim 89, the focus of the analysis is whether Claim 89 has the same scope as the original allowed Claim 33.

In order to determine whether or not the original Claim 33 and the new Claim 89 are equivalent, a comparison of the claims must be made. Claim 33 rewritten as an independent claim must necessarily combine the original Claims 1, 10, 27, 32 and 33 without changing the scope of the claim. The original Claims 1, 10, 27, 32 and 33 which were filed on June 5, 2003 are reproduced below.

1. An implant for use in fusing adjacent bony structures comprising at least one structural member combined with at least one flexible planar member to retain the at least one structural member to form the implant.
10. The implant of claim 1 wherein the at least one structural member comprises a plurality of pieces of bone.
27. The implant of claim 10 wherein the flexible planar member further comprises at least one opening to permit fusion of the adjacent bony structures through the implant.
32. The implant of claim 27 wherein the at least one opening comprises an inner wall extending through the entire implant.
33. The implant of claim 32 wherein the inner wall is formed through the flexible planar member and through the bone pieces.

The amended Claim 89 which was filed on May 9, 2005 is also reproduced below.

89. (New) An implant for use in fusing adjacent bony structures comprising at least one structural member combined with at least one flexible planar member to retain the at least one structural member to form the implant, wherein the at least one structural member comprises a plurality of pieces of bone, and wherein the implant includes at least one opening extending through the entire implant to permit fusion of the adjacent bony structures through the implant, said opening including an inner wall extending through the at least one flexible planar member and through the bone pieces.

A comparison of original Claim 33 and new Claim 89 reveals two differences which change the scope of the original Claim 33. The claims differ in respect to through what the at least one opening must extend, and through what the inner wall must extend.

Original Claim 33 states "the flexible planar member further comprises at least one opening" (Claim 27) while Claim 89 states "the implant includes at least one opening extending through the entire implant." To determine the meanings of "the entire implant" and "the flexible planar member," the claim language themselves must be examined. Examining original Claim 1 and Claim 89 leads to the same meaning of these terms since they both use identical language in

respect to these terms. In both claims the entire implant comprises at least one structural member combined with at least one flexible planar member, so "the entire implant" and "the flexible planar member" are not equivalent. Thus, Claim 89, which requires *the entire implant* to include the at least one opening, differs in scope from Claim 33, which only requires *the flexible planar member* to include the at least one opening.

Original Claim 33 also requires "an inner wall extending through the entire implant" (Claim 32) while Claim 89 only requires "an inner wall extending through the at least one flexible planar member and through the bone pieces." Again, to determine the meanings of the terms, the claims themselves must be examined. Examining Claim 1 and Claim 10 with Claim 89 leads to "the implant" comprising at least one structural member combined with at least one flexible planar member, and the at least one structural member comprising the bone pieces. The "entire implant" is therefore not equivalent to "the at least one flexible planar member and bone pieces" since the "entire implant" only comprises the other elements, and is thus broader than "the at least one flexible planar member and bone pieces." Thus, Claim 89, which only requires the inner wall to extend through *the at least one flexible planar member and the bone pieces*, differs in scope from Claim 33, which requires the inner wall to extend through *the entire implant.*

With regard to new Claims 90-91, based on the same analysis above, they also differ in scope from the original Claims 33-34.

Conclusion

Based on the analysis of the record, the examiner was correct in finding that the amended Claims 89-91 differed in scope from the original Claims 33-35. Accordingly, the change in scope of claims 89-91 resulted in the new ground of rejection in the Final Office action of July 27, 2005 and was necessitated by applicant's amendment. 33-35. The petition is, therefore, dismissed.

The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3738 pending the filing of a proper reply to the final rejection. Petitioner may file a request for reconsideration of this decision, without fee. However, such a request must be filed within two months of the date of this decision. See 37 CFR 1.181. Any inquiry regarding this decision should be directed to Henry Yuen, Special Program Examiner, at (571) 272-4856.

PETITION DISMISSED.

Karen M. Young

for Frederick R. Schmidt, Director
Technology Center 3700

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JUN 07 2004

NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON MA 02210-2604

In re Application of	:	
James Coleman et al	:	
Serial No.: 10/455,768	:	DECISION ON
Filed: June 4, 2003	:	PETITON TO MAKE SPECIAL
For: Surgical Stapler	:	

This is in response to applicants' petition filed June 7, 2004, 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
Director
Technology Center 3700/2900

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Paper No. 9

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

COPY MAILED

JUN 28 2004

OFFICE OF PETITIONS

In re Application of	:	
Alsobrook et al.	:	
Application No. 10/455,772	:	ON PETITION
Filed: June 4, 2003	:	
Attorney Docket No. 21402-589C	:	
(CURA-889C)	:	
For: NOVEL PROTEINS AND NUCLEIC	:	
ACIDS ENCODING SAME	:	

This is a decision on the petition under 37 CFR 1.47(a), filed April 8, 2004. Petitioner obtained a five-month extension of time to reply. Accordingly, the petition is filed timely.

Petitioner has shown that the non-signing inventors have refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of facts of Nicole Carlucci establishes that the inventors were mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that they sign the declaration.

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

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

The application file is being forwarded to Technology Center 1600.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Jason Baumgartner
1697 Quinnipiac Ave.
New Haven, CT 06513

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JUN 2 8 2004

OFFICE OF PETITIONS

In re Application of :
Alsobrook et al. :
Application No. 10/455,772 : LETTER
Filed: June 4, 2003 :
Attorney Docket No. 21402-589C :
(CURA-889C) :
For: NOVEL PROTEINS AND NUCLEIC :
ACIDS ENCODING SAME :

Dear Mr. Baumgartner:

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

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

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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Weizhen Ji
375 Old Rock Road
Branford, CT 06405

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JUN 2 8 2004

OFFICE OF PETITIONS

In re Application of :
Alsobrook et al. :
Application No. 10/455,772 : LETTER
Filed: June 4, 2003 :
Attorney Docket No. 21402-589C :
(CURA-889C) :
For: NOVEL PROTEINS AND NUCLEIC :
ACIDS ENCODING SAME :

Dear Mr. Ji:

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

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
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ONE FINANCIAL CENTER
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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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MAR 19 2007

OFFICE OF PETITIONS

In re Application of :
Kas Kasravi :
Application No. 10/455,780 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. 10/455,780

This is a decision on the petition under 37 CFR 1.182 to change the name of the sole inventor cited on this application in USPTO records.

The petition is granted.

The name of the sole inventor for the above-cited application is changed to "Kas Kasravi."

A corrected filing receipt is enclosed.

The application file is being directed to technology Center 3600, GAU 3627 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

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United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/455,780	06/05/2003	3627	916	14012-038001/50-02-031	22	3

CONFIRMATION NO. 4608

26230
FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

CORRECTED FILING RECEIPT

OC000000022897993

Date Mailed: 03/14/2007

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

Applicant(s)

Kas Kasravi, W. Bloomfiled, MI;

Power of Attorney: The patent practitioners associated with Customer Number **26230**.

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/15/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/455,780

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Knowledge representation using reflective links for link analysis applications

Preliminary Class

705

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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ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON DC 20036

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OFFICE OF PETITIONS

In re Application of
Steven E. Rokita et al.
Application No. 10/455,805 : ON PETITION
Filed: June 6, 2003
Attorney Docket No: **108172-00093**

This is a decision on the petition filed March 6, 2007 for a refund under 37 CFR 1.183 or 37 CFR 1.181. The petition is being treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.181 is **GRANTED**.
The request for refund under 37 CFR 1.183 is **GRANTED**.

An amendment was filed September 5, 2006 with a one month extension of time, in response to the non-Final Office Action mailed May 3, 2006, which set a three (3) month statutory period for reply. In response thereof, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on September 15, 2006, setting the longer of one month or thirty days for reply and noting that pursuant to 37 CFR 1.136(a), extensions of time were available.

Petitioner asserts that the office action mailed September 15, 2006 was never received.

The file record discloses that the Office Action was mailed to the address of record which is the same address used on all correspondences from the USPTO. Petitioner has provided a copy of the docket report and mail log, wherein receipt of the Office Action mailed September 15, 2006 would have been filed, had it been received. To show that the Notice mailed September 15, 2006 was not received, petitioner also explains, that after searching the mail logs and docket, it was concluded that no correspondence was received for this matter from the USPTO,

In that the statements and the exhibits from the docket record and mail log for the instant matter show no entry indicating receipt of the Office Action mailed September 15, 2006, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received at the address of record and while the application would have become abandoned by operation of law, for failure to file a response to the Notice of Non-Compliant Amendment (37 CFR 1.121) by October 15, 2006, the holding of abandonment is withdrawn. Further in view of the non receipt of the Office Action and the holding of abandonment having been withdrawn, there is no need to extend the period for response and thus the five month extension of time request will not be entered. Petitioner's deposit account no 01-2300 will be credited back in the amount of $1080.00 for the five month extension of time fee paid with the instant petition.

This matter is being referred to Technology Center 1634 for appropriate action on the amendment filed with the instant petition on March 6, 2007.

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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OFFICE OF PETITIONS

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

In re Application of :
Andreas Berg, et al. :
Application No. 10/455,811 : DECISION ON PETITION
Filed: June 6, 2003 : TO WITHDRAW
Attorney Docket No. 449122055600 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed May 17, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison & Foerster, LLP has been revoked by the assignee of the patent application on September 5, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

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

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MAR 12 2007

MILLEN WHITE ZELANO & BRANIGAN, PC
2200 CLARENDON BLVD
SUITE 1400
ARLINGTON, VA 22201

In re Application of	:
Cornelia Norden et al	:
Serial No.: 10/455,820	: PETITION DECISION
Filed: June 6, 2003	:
Attorney Docket No.: SCH-1905	:

This is in response to the petition under 37 CFR 1.181, filed January 23, 2007, requesting withdrawal of the Finality of the Office action mailed November 30, 2006.

BACKGROUND

A review of the file history shows that the examiner mailed a first Office action to applicants on June 14, 2006, clearly stating that the action was not an action on the merits, except as set forth below and then proceeded to .set forth a rejection of claim 1-10 under 35 U.S.C. 112, second paragraph, and under 35 U.S.C. 101 with regard to the claims as to whether they were intended to be method of making or method of use claims.

Applicants replied on September 14, 2006, by amending claims 1-10 to clearly state in the preamble of the claim that the claims were directed to a method of treating a condition utilizing a particular compound. No other comments were made or considered necessary.

In a new Office action, mailed November 30, 2006, the examiner withdrew the rejections under 35 U.S.C. 101 and 112, second paragraph. Claims 7 and 10 were objected to as failing to further limit the claims from which they depend and claims 5-7 were objected to for other informalities. Claims 1-10 were rejected under 35 U.S.C. 112, first paragraph, as lacking enablement for the diseases being treated and the compounds used. Claims 1-2, 4-5, 7-8 and 10 were rejected under 35 U.S.C. 103(a) as unpatentable over Bilodeau et al in view of Felson et al and Ohkawa et al. Claims 1-10 were rejected under 35 U.S.C. 103(a) as unpatentable over Ohkawa et al in view of Felson et al and Bollet. Claims 1-3 and 5 were further rejected under 35 U.S.C. 103(a) as unpatentable over Murata et al in view of Bollet and Ohkawa et al. Claims 1-3, 6 and 9 were also rejected under 35 U.S.C. 103(a) as unpatentable over Aigner et al in view of Ohkawa et al. The examiner then made the action Final based on applicants' amendments.

Applicants filed this petition on January 23, 2007 requesting withdrawal of the finality of the Office action following a telephone interview on January 3, 2007, in which the examiner declined to withdraw finality. A reply to the Office action was filed February 28, 2007, but has not been considered by the examiner pending decision on this petition.

DISCUSSION

Applicants request withdrawal of the finality of the Office action of November 30, 2006, [citing MPEP §706.07(a)] on the basis that the examiner has made the Office action Final on the first action on the merits.

It is clear that the Office action mailed June 14, 2006, did state that the action was NOT on the merits except for formal matters – determination of whether the claims were directed to a method of making a pharmaceutical or a method of treating a disease/condition. The claims as originally presented did recite "the use of a compound ... for the production of a pharmaceutical agent for the treatment of a disease", suggesting that the claims were directed to production of a compound, however no method steps of making a compound were presented. Thus the claims were indefinite. Applicants amended the claims to clearly claim a method of treating a disease using a pharmaceutical as defined. Only then did the examiner actually examine the claims on the merits under 35 U.S.C. 102, 103 and 112, first and second paragraphs.

Since the examiner stated that the first action was not a complete action – it was limited only to consideration of the claims with respect to 35 U.S.C. 101 and 112, second paragraph, making the next action a Final Office action was improper.

The finality of the Office action mailed November 30, 2006, is withdrawn and the action is designated a non-Final Office action.

DECISION

The petition is **GRANTED.**

The application will be forwarded to the examiner for consideration of the amendment filed February 28, 2007, which will be considered a reply to a non-Final Office action.

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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HELLER EHRMAN LLP
4350 LA JOLLA VILLAGE DRIVE, 7th FLOOR
SAN DIEGO, CA 92122

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SEP 16 2008

In re Application of :
RAITANO, et al. :
Application No. 10/455,822 : DECISION ON PETITION TO
Filed: June 4, 2003 : WITHDRAW FROM RECORD
Attorney Docket No. 511582001625 :

his 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, 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 Leslie B. Overman 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.

There is an outstanding Office action mailed August 12, 2008 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: ARTHUR B. RAITANO
12685 ROSE AVENUE
LOS ANGELES, CA 90066

cc: GOODWIN PROCTER, LLP
ATTN: PATENT ADMINISTRATOR
135 COMMONWEALTH DRIVE
MENLO PARK, CA 94025-1105

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Paper No. 3

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AUG 2 9 2003

Technology Center 2100

Att: Joseph J. Bango, Jr.
Conn. Analytical Corp.
696 Amity Road
Bethany, Connecticut 06524

In re Application of: Joseph J. Bango	)	**DECISION ON PETITION TO MAKE SPECIAL UNDER 37 C.F.R. §1.102 AND M.P.E.P. §708.02(XI): COUNTERING TERRORISM**
Application No. 10/455,826	)	
Filed: June 5, 2003	)	
For: OPTICAL ANTIVIRUS FIREWALL FOR INTERNET, LAN, AND WAN COMPUTER APPLICATIONS	)	

This is a decision on the petition to make special filed June 5, 2003 under 37 C.F.R. §102(d) and M.P.E.P. §708.02(XI): Inventions For Countering Terrorism.

The petition is **DENIED**.

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. § 1.102(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 claimed invention is generally directed to a method and system for screening computer viruses. Antivirus systems do not directly prevent "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 activities "that would be a criminal violation if committed within the jurisdiction of the United States or of any State". Furthermore, virus elimination does not directly prevent acts that appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping.

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.

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.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
(703) 306-4160

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Paper No. _____

Date : February 16, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of Application No. 10/455875

Applicant(s) :Homer S. Sambar et al
Application No. :10/455,875
Filed :June 6, 2003

The above-identified application has been assigned Patent No. 6,864,452 and an issue date of March 8, 2005.

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

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of March 8, 2005:

"All reference to Patent No. 6,864,452 to Homer S. Sambar et al of Wisconsin, for REDUNDANT SWITCH HAVING TORSIONAL COMPLIANCE AND ARC-ABSORBANT THERMAL MASS appearing in the Official Gazette of March 8, 2005 should be deleted since no patent was granted."

Karen Creasy

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

cc: Paul Harrison, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis (CDS), CM1-6A07
Tamara Greene, Crystal Park 3-908

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SUSAN M. DONAHUE
ROCKWELL AUTOMATION INC.
704-P
1201 SOUTH SECOND STREET
MILWAUKEE WI 53204-2496

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Homer S. Sambar et al :
Application No. 10/455,875 :
Filed: June 6, 2003 :
Attorney Docket No. 03AB036 :

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 23, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

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

---

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

The examiner of Technology Center AU 2832 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

cc:
ADAM J. FORMAN
QUARLES & BRADY
411 E. WISCONSIN AVENUE, SUITE 2040
MILWAUKEE WI 53202-4497

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AUG 0 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Albert Long Trinh, et. al.	:	
Application No. 10/455,885	:	ON PETITION
Filed: June 6, 2003	:	
Attorney Docket No. TRINH-2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 14, 2005, to revive the above-identified application.

The petition is **dismissed**.

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 and Fee(s) Due mailed February 25, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned after midnight May 25, 2005.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (**2**) the petition fee 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**) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (3) above.

With respect to item(1) above, the petition appears to be signed by one of two inventors. However, all communications must be signed by both inventors. 37 CFR 1.33(b) states:

> 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

(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)." Petitioner is advised that this is not a final agency decision.

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

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

By Hand: Customer Service Window
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) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Albert Long Trinh
8671 Creekwood Lane
Maineville, OH 45039

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SEP 0 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Albert Long Trinh, et. al.	:	
Application No. 10/455,885	:	ON PETITION
Filed: June 6, 2003	:	
Attorney Docket No. TRINH-2	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 17, 2005, to revive the above-identified application.

In response to the Decision mailed August 2, 2005, petitioner hereby submits an executed petition signed by both inventors, which contains the statement of unintentional delay.

Since the instant petition now meets the standard requirements under 37 CFR 1.137(b), the petition is **GRANTED**.

This application is being referred to the Office of Publications for further processing into a patent.

Any questions concerning this matter may 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : ~~7/27/05~~ 3/9/06

Paper No.: —

TO SPE OF : ART UNIT 3722

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/455924 Patent No.: 6890131 B2

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

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

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

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

Monica S. Carter
MONICA CARTER
~~SUPERVISORY PATENT EXAMINER~~

SPE

3722
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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FEB 19 2010

OFFICE OF PETITIONS

MHKKG/SUN
PO BOX 398
AUSTIN TX 78767

In re Application of :
Krishnamurthy, et al. :
Application No. 10/455,938 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 6000-08800 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 4, 2009, and supplemented on January 14, 2010.

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

The holding of abandonment is **WITHDRAWN**.

The application was held abandoned due to failure to timely reply to the final Office action, mailed April 1, 2009. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on July 2, 2009. The Office mailed a Notice of Abandonment on November 19, 2009.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3)

include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.[1] A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."[2] "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."[3]

With the instant petition, petitioner has submitted a copy of a master docket report, showing all of the firm's replies docketed for a due date of July 1, 2009. An entry for the instant application is absent, supporting the conclusion that the April 1, 2009 Office action was not received.

In view thereof, the petition is granted.

The application is being forwarded to Group Art Unit 2111 for re-mailing of the April 1, 2009 final Office action, setting a new period for reply.

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

Cliff Congo
Petitions Attorney
Office of Petitions

---

[1] See MPEP 711.03(c)(II).

[2] MPEP 711.03(c)(II).

[3] Id.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 9-6-06

TO SPE OF : ART UNIT 3723

SUBJECT : Request for Certificate of Correction on Patent No.: 6991528

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:

[signature]
SPE

3723
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

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

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APR 12 2007

OFFICE OF PETITIONS

In re Application of	:	
Albert K. Chin et al	:	
Application No. 10/455,942	:	DECISION GRANTING PETITION
Filed: June 6, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 80121-07318	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 12, 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 election; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Restriction Requirement of June 14, 2006, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 3739.

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

WOODSFULLER SHULTZ & SMITH P.C.
ATTN: JEFFREY A. PROEHL
P.O. BOX 5027
SIOUX FALLS SD 57117

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JUN 23 2008

OFFICE OF PETITIONS

In re Application of :
William Lopez :
Application No. 10/455,948 : DECISION GRANTING PETITION
Filed: June 6, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 23-0169 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 26, 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 the issue fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed June 15, 2006, is accepted as having been unintentionally delayed.

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

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

This application is being referred to the Office of Data Management to be processed into a patent.

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

WILLIAM A. LOPEZ
8292 ACAPULCO PLACE
RIVERSIDE, CA 92540

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

DONN K. HARMS
12702 VIA CORTINA
SUITE 100
DEL MAR, CA 92014

COPY MAILED
JUL 0 8 2004
OFFICE OF PETITIONS

In re Application of :
Roger Ngan :
Application No. 10/445,979 :
Filed: June 5, 2003 : ON PETITION
Title of Invention: :
TOY VEHICLE INTERSECTION :
WITH ELEVATIONAL ADJUSTMENT :

This is a decision on the petition under 37 CFR 1.137(a), filed June 14, 2004, to revive the above-identified application.

The petition is **DISMISSED.**

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

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed October 21, 2003. The Notice set a statutory period for reply of three (3) months. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the above-identified application became abandoned January 22, 2004. A Notice of Abandonment was mailed on April 29, 2004.

Petition under 37 CFR 1.137(a) for unavoidable abandonment

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (**1**)the required reply (unless previously filed), which may met by the filing of a

notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (**2**) the petition fee as set forth in 37 CFR 1.17(l); (**3**) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (**4**) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks items (1) and (3).

Petitioner must establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.[1] 35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee ... at any time ... if the delay is shown *to the satisfaction of the Commissioner* to have been unavoidable." (emphasis added).

"In the specialized field of patent law, ... the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of those provisions is entitled to considerable deference." Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA)1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural

[1] The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

Resources Defense Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")).

"The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1787 (Fed. Cir. 1995) (citing In re patent No. 4,409,763, 7 U.S.P.Q.2d (BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)). However, "The question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."[2] Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.[3] The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was

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[2] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

[3] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D. D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D. D.C. 1985) (Plaintiffs, through their 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).

unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Finally, a "delay (in responding) resulting from the lack of knowledge or improper application of the patent statute, rules of practice, or MPEP, [] does not constitute unavoidable delay." MPEP 711.03(c).

Applicant's Assertion

Applicant asserts that a timely reply was filed via facsimile transmission on January 19, 2004. In support of this assertion, Applicant provides a copy of his "Send Confirmation Report", which putatively confirms completion of the facsimile transmission to this Office on January 19, 2004. Applicant further avers that, upon receipt of a Notice of Abandonment from this Office, mailed on April 29, 2004, Applicant re-sent a copy of the original facsimile on May 3, 2004. Applicant again provides a copy of a "Send Confirmation Report, which putatively

verifies that a 12 page facsimile was received by this Office on May 3, 2004.

Analysis of the instant petition

As to item (3), Applicant has not provided an adequate showing of unavoidable delay. Petitioner is advised that there are three provisions wherein this Office will consider correspondence as being timely filed. The first method, applicable here[4], is under 37 CFR 1.8, which provides that

> correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
>
> (1) Correspondence will be considered as being timely filed if:
>
> (i) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:
>
> (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or
>
> (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
>
> (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

37 CFR 1.8.

Conclusion

Applicant has not demonstrated compliance with 37 CFR 1.8. Applicant is advised that a lack of knowledge or improper

[4] The other two methods are under 37 CFR 1.10, which provides for the filing of papers and fees by "Express Mail", and under section 503 of the Manual for Patent Examining Procedure ("MPEP"), by enclosing with the paper a self-addressed postcard specifically identifying the item.

application of the patent statute, rules of practice, or MPEP, [] does not constitute unavoidable delay. If Applicant has complied with one of the three methods wherein this Office considers correspondence as being timely filed as set out above, Applicant should submit such evidence in a renewed petition.

Alternate Venue

Applicant is again strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if Applicant intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Petition under 37 CFR 1.137(b) for unintentional abandonment

A grantable petition under 37 CFR 1.137(b)[5] must be accompanied by: (1) the required reply,[6] 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

---

[5] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[6] 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.

terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). (Emphasis supplied).

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

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

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

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

Telephone inquiries concerning this 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
www.uspto.gov

Paper No. 9

DONN K. HARMS
12702 VIA CORTINA
SUITE 100
DEL MAR, CA 92014

COPY MAILED

JUL 2 8 2004

OFFICE OF PETITIONS

In re Application of :
Roger Ngan :
Application No. 10/445,979 :
Filed: June 5, 2003 : ON PETITION
Title of Invention: :
TOY VEHICLE INTERSECTION :
WITH ELEVATIONAL ADJUSTMENT :

This is a decision on the Request for Reconsideration of Petition Under 37 CFR 1.137, filed July 20, 2004 (Certificate of Mailing dated July 14, 2004), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed October 21, 2003. The Notice set a statutory period for reply of three (3) months. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the above-identified application became abandoned January 22, 2004. A Notice of Abandonment was mailed on April 29, 2004.

Applicant asserts that a timely reply to the Office action, in the form of an Amendment, was timely filed via facsimile on January 19, 2004. In support of this assertion, Applicant provides copies of the Amendment, which includes a Certificate of Facsimile Transmission dated January 19, 2004.

In view of the above, the petition is granted.

The application is being forwarded to Technology Center Art Unit 3712 for processing of the Amendment, filed January 19, 2004, in due course.

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

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JUL 17 2006

OFFICE OF PETITIONS

In re Application of :
Hidetoshi Ozoe :
Application No. 10/455,996 :
Filed: June 6, 2003 :
Patent No: 6,831,505 :
Issued: December 14, 2004 :
Attorney Docket No. :
16698 :

This is a decision on the petition filed March 31, 2006, pursuant to 37 C.F.R. § 1.183, 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 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

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

Daniel J. Plutt
1049 E. Iliff Way
Superior, CO 80027

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JUL 27 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Daniel J. Plutt :
Application No. 10/455,998 :
Filed: June 6, 2003 :
Attorney Docket No. WB2003-001 :

This is a decision on the petition under 37 CFR 1.137(a), filed September 28, 2004, to revive the above-identified application.

The petition is **DISMISSED.**

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

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed;[a] (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). This petition lack item (3).

The above-identified application became abandoned for failure to submit substitute drawings in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed August 8, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned after midnight October 8, 2003.

The Notice to File Corrected Application Papers required petitioner to submit substitute drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121. The Office hereby acknowledges receipt of two sheets of drawings containing Figures 6-10, filed with the instant petition.

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[a] 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.

Petitioner asserts that he regularly and diligently checked his mail and that he never received the Notice to File Corrected Application Papers mailed August 8, 2003.

The showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay. Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.

A review of the record of this file indicates no irregularity in the mailing of the Notice to File Corrected Application Papers, and, in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by showing that the Notice was not in fact received. In this regard, petitioner, Daniel J. Plutt, should submit all available documentary evidence, such as copies of docket sheets, calendars on which the due date would have been recorded had the Notice been received, mail logs, etc., for a reasonable period after the date of the Notice to show receipt of other mail during this period and to support the allegation of nonreceipt of the Notice in question. It is noted that petitioner has filed a number of other applications with the USPTO, which would have necessitated some type of system for keeping track of the due dates for Office actions. Therefore, petitioner should explain the system utilized for keeping track of due dates when Office actions are received and the procedures and controls utilized upon receipt thereof. **Additionally, petitioner must provide a statement attesting to the fact that a search of his records indicates that the Office action was not received.** *See* MPEP Section 711.03(c) and 1156 Official Gazette 53 (November 16, 1993). Further, petitioner must submit statements from all persons having access to petitioner's mail and having personal knowledge of the nonreceipt of the Notice.

If petitioner cannot provide the evidence required to establish unavoidable delay or does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $750 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b),

was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Applicant has appointed an attorney or agent to conduct all business before the U. S. Patent and Trademark Office. Dual correspondence with an applicant and applicant's attorney will not be undertaken. Accordingly, applicant is required to conduct all future correspondence with this Office through the attorney or agent of record. See 37 CFR 1.33. However, if applicant desires to receive future correspondence regarding this application, a proper Revocation of Power of Attorney must be submitted to the Office. Nevertheless, a courtesy copy of this decision is being mailed to petitioner.

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
Alexandria, VA 22314

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

Any questions 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

Frances Hicks
Lead Petitions Examiner

cc:
Wayne P. Bailey
6644 Cherokee CT.
Longmont, CO 80503

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

Daniel J. Plutt
1049 E. Iliff Way
Superior, CO 80027

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OCT 1 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Daniel J. Plutt	:	
Application No. 10/455,998	:	ON PETITION
Filed: June 6, 2003	:	
Attorney Docket No. WB2003-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 22, 2005, to revive the above-identified application.

The Office acknowledges receipt of $750 for the unintentional petition to revive fee, the statement of unintentional delay, and two (2) sheets of drawings containing Figures 6-10, filed September 28, 2004.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

MAILED

SEP 10 2003

Office of the Director
Paper No. Group 3600

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER CO 80202

In re application of
Gilman A. Hill
Application No.10/456003
Filed: June 6, 2003
For: DEEP-WELL, CONTINUOUS COILED-TUBING APPARATUS AND METHOD OF USE

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on June 6, 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 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 declaration by applicant that applicant is at least 65 years old.

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

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

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

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

SNM/ekn 8/29/03

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JAN 2 5 2006

OFFICE OF PETITIONS

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

In re Application of :
Toshikatsu Makuta :
Application No. 10/456,007 : DECISION ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. WAKA 20.440 :

This is a decision on the petition under 37 CFR §1.137(b), filed November 14, 2005.

This above-identified application became abandoned after the finality of the for failure to timely file a proper response to a final Office Action which was mailed on April 19, 2005. The final Office Action set a three (3) month shortened statutory period for reply. No extension of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on July 20, 2005. A Notice of Abandonment was mailed October 24, 2005 .

The requirements for a grantable petition under 37 CFR §1.137(b) have been met. This petition is hereby **Granted**.

A three (3) month extension of time was requested. However, pursuant to 37 CFR §1.136, 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's statutory period expired on October 20, 2005. Petitioner is ineligible for any extensions of time. Accordingly, deposit account number 50-1290 will be credited with $1,020.00 for fees paid to acquire an extension of time.

The RCE and the amendment submitted with the instant petition will be forwarded to Technology Center 2800 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

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JUL 10 2007

OFFICE OF PETITIONS

In re Application of
Walter Reith et al.
Application No. 10/456,020
Filed: June 6, 2003
Attorney Docket No. 1363-2 PCT/US/CON

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed February 26, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on December 19, 2006, for failure to timely file a reply to the final Office action mailed July 14, 2006. Petitioner was advised by way of Advisory Notice mailed January 22, 2007, that the response filed December 18, 2006 with a two month extension of time and certificate of mail dated December 13, 2006 failed to place the application in condition for allowance. Accordingly, a Notice of Abandonment was mailed January 31, 2007.

The present petition under 37 CFR 1.137(b) is accompanied by a Notice of Appeal and an amendment after final rejection.

---

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

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

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

The Examiner has determined that the amendment filed with the present petition places the application in condition for allowance. Therefore, the Notice of Appeal filed with the petition will not be entered and the Notice of Appeal fee in the amount of $500.00 will be credited back to deposit account no. 08-2461.

Additionally, 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 $$570.00 extension of time fee submitted with the petition on February 27, 2007 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will also be credited to deposit account no. 08-2461.

The matter is being referred to Technology Center 1714.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ALLEN R. KIPNES
WATOV & KIPNES, P.C.
P.O. BOX 247
PRINCETON JUNCTION, NJ 08550

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MAR 0 3 2005

OFFICE OF PETITIONS

In re Application of :
Eric Albee :
Application No. 10/456,051 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 126.1.001 :

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 within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed June 3, 2004, which set a shortened statutory period for reply of three (3) months. Three months extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 4, 2004.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on February 7, 2005.

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

This matter is being forwarded to Technology Center AU 2879 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JUL 20 2005

LAW OFFICES OF CLEMENT CHENG
17220 NEWHOPE STREET #127
FOUNTAIN VALLEY CA 92708

In re Application of	:	
Yunes Nabilsi	:	
Serial No.: 10/456,059	:	DECISION ON PETITION
Filed: June 6, 2003	:	
For: Medical Cooler Device	:	

This is in response to applicants' petition filed June 20, 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : September 15, 2005

TO SPE OF : ART UNIT 2873

SUBJECT : Request for Certificate of Correction on Patent No.: 6,806,986

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

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

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

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

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

Comments:

_____

_____

_____

_____

_____

SPE — Art Unit 10/14/05

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SERIAL NO. 10/456,078
Paper No.: 10/15/2005

DATE : September 15, 2005

TO SPE OF : ART UNIT 2873

SUBJECT : Request for Certificate of Correction on Patent No.: 6,806,986

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

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

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

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

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

Comments:

SPE 10/17/05
SPE **Art Unit**

12/9/04

United States
Patent And
Trademark Office

P.O. Box 1450, Alexandria, Virginia 22313-1450 – www.uspto.gov

2665

02/06/04

Fleit, Kain, Gibbons, Gutman,
Bongini & Bianco P.L.
551 NW 77th Street
Suite 111
Boca Raton, FL 33487

Dear Applicant:

The Box PGPub replacement drawings for application number 10/456074 received on 01/30/04 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Kaletus King, Office of Pre-Grant Publication, at 703 605-4283.

Kaletus King

Signature of Reviewer, Office of Pre-Grant Publication

UNITED STATES PATENT AND TRADEMARK OFFICE

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PEACOCK MYERS, P.C.
201 THIRD STREET, N.W.
SUITE 1340
ALBUQUERQUE, NM 87102

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SEP 18 2006
OFFICE OF PETITIONS

In re Application of :
Harmon Haughton :
Application No. 10/456,085 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. O&L 1000-1249 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 2, 2006, to revive the above-identified application.

The application became abandoned for failure to reply to the non-final Office action mailed July 28, 2005. A Notice of Abandonment was mailed on March 7, 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 specification; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Revocation and Power of Attorney filed May 2, 2006, has been accepted and made of record.

The application file is being referred to Technology Center Art Unit 3751, for review of the amendment filed with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE PLACE
EXCHANGE PLACE
BOSTON, MA 02109-2881

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MAR 31 2005

OFFICE OF PETITIONS

In re Application of :
Schmidt, et al. :
Filed: June 6, 2003 : ON PETITION
Application No. 10/456,103 :
Attorney Docket No.: ASC-008C :

This is a decision on the petition under 37 CFR 1.182, filed October 21, 2004, to change the order of inventors in the above-identified application.

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

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

The order of inventors will be changed as follows:

1. T. LANGDO
2. M. CURRIE
3. R. HAMMOND
4. A. LOCHTEFELD
5. E. FITZGERALD

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

Telephone inquiries pertaining to this decision should be directed to the undersigned at (574) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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DFW Oct-06

CSABA TRUCKAI
19566 ARDEN COURT
SARATOGA CA 95070

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OFFICE OF PETITIONS

In re Application of :
Truckai et al. :
Application No. 10/456,113 : DECISION ON PETITION
Filed: 5 June, 2003 :
Atty Docket No. DFINE.035A :

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

The petition is **GRANTED**.

The application became abandoned on 26 October, 2005, for failure to timely reply to the non-final Office action mailed on 25 July, 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. Notice of Abandonment was mailed on 14 February, 2006.

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

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

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

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

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

Petitioners have filed an amendment to the claims as the required reply.

The "Establishment of Right of Assignee to take Action and Revocation and Power of Attorney" filed on 1 August, 2006, cannot be accepted because does not include the required statement under 37 CFR 3.73(b). It is recommended that petitioners submit a new revocation and power of attorney using the enclosed forms. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence will be mailed solely to the address of record.

This application is being referred to the Technology Center 3739 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

Encl: PTO/SB/82
PTO/SB/96

Cc: KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

PTO/SB/82 (01-06)
Approved for use through 12/31/2008. OMB 0651-0035
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	
Filing Date	
First Named Inventor	
Art Unit	
Examiner Name	
Attorney Docket Number	

I hereby revoke all previous powers of attorney given in the above-identified application.

☐ A Power of Attorney is submitted herewith.

OR

☐ I hereby appoint the practitioners associated with the Customer Number: ____

☐ Please change the correspondence address for the above-identified application to:

☐ The address associated with Customer Number: ____

OR

☐ Firm *or* Individual Name			
Address			
City		State	Zip
Country			
Telephone		Email	

I am the:

☐ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Signature			
Name			
Date		Telephone	

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 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.

PTO/SB/96 (09-06)
Approved for use through 03/31/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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.

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

KIM POULSON
14421 46TH AVENUE S.
TUKWILA, WA 98168

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FEB 03 2005

OFFICE OF PETITIONS

In re Application of :
Poulson, Kim Alt :
Application No. 10/456,119 : ON PETITION
Filed: June 6, 2003 :
Title: Suppressed Micro Phonic Phase Stable :
Synthesizer

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 26, 2005, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed March 25, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on June 26, 2004.

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

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

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

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

SPE C. Friedman

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/456,126

Paper No.: _____

DATE : 7/29/05

TO SPE OF : ART UNIT 3635

SUBJECT : Request for Certificate of Correction on Patent No.: 6895716

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

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

Lamonte M. Newsome

Thank You For Your Assistance

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

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

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

Comments:

SPE 3635 — 3635 Art Unit

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GARRETT & DUNNER, L.L.P.
1300 I STREET N.W.
WASHINGTON, DC 20005-3315

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OFFICE OF PETITIONS

In re Application of :
Suresh Sawant et al :
Application No. 10/456,138 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. 8303.0048

This is a decision on the petition, filed November 12, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 18, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter will be forwarded to Technology Center AU 1712 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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IPASS INC. (DeLizio Gilliam)
C/O DELIZIO GILLIAM, PLLC
15201 MASON ROAD
SUITE 1000-312
CYPRESS TX 77433

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MAR 0 2 2009

OFFICE OF PETITIONS

In re Application of :
Sunder et al. :
Application No. 10/456,159 : DECISION ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. 2062.014US1 :

This is a decision on the petition, filed November 26, 2008, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181.

This application would have been held abandoned for failure to reply to the Notification of Non-Compliant Amendment mailed April 17, 2008, which set an extendable one (1) month shortened statutory period for reply. A Notice of Abandonment was mailed on November 13, 2008.

Petitioner asserts that the Notification of Non-Compliant Amendment dated April 17, 2008 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. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;

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 master docket for the firm 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. If no master docket exists, the practitioner should so state and provide other evidence such, as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or individual docket record for the application in question.

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 fails to satisfy all of the above-stated requirements. Items (1) and (3) have not been satisfied.

As to item (1), petitioner needs to describe the system used for recording Office actions and establish that the system was sufficiently reliable. Although petitioner has described the system utilized, petitioner's statement has not established that the system is sufficiently reliable.

As to item (3), a review of the docket records shows that petitioner has failed to provide master docket records for the firm. Nor has petitioner stated that a master docket does not exist. A copy of the practitioner's record(s) required to show non-receipt of the Notice 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. See MPEP 711.03(c). Petitioner has provided a copy of 3 pages of docket records, however, it is not clear that the records submitted constitute master docket records. To the extent the records provided are master docket records and not just docket records for a specific attorney, a statement to that effect should be provided.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $1620.00 petition fee.

It should be noted that this petition was not treated under 37 CFR 1.137(b) because since the filing of the petition, a change of address and power of attorney have been submitted. Thus it is not apparent that current counsel has the authority to charge deposit account 19-0743.

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

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

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

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

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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C/O DELIZIO GILLIAM, PLLC
15201 MASON ROAD
SUITE 1000-312
CYPRESS TX 77433

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MAY 26 2009

OFFICE OF PETITIONS

In re Application of :
Sunder et al. :
Application No. 10/456,159 : DECISION ON PETITION
Filed: June 5, 2003 :
For. Method and System to Manage A Network :
To Manage A Network Connection
Application

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 31, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit a proper reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on April 17, 2008. The Notice set an extendable one- month reply period of May 17, 2008. A Notice of Abandonment was mailed on November 13, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 2452 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03-12-09

TO SPE OF : ART UNIT 1797

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/456162 Patent No.: 7435392

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. 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: _____

_____

_____

_____

_____

SPE **Art Unit** 1797

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666 THIRD AVENUE, 10TH FLOOR
NEW YORK, NY 10017-5621

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OFFICE OF PETITIONS

In re Application of :
Richard J. Krulik et al :
Application No. 10/456,171 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No. 206,150 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 22, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 10, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 11, 2005.

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 submitted with the petition on July 22, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The Change of Correspondence Address filed on July 22, 2005 has been entered and made of record.

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

This matter is being referred to Technology Center AU 3727.

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

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12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

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OFFICE OF PETITIONS

In re Application of Leslie Cline :
Application No. 10/456,185 : Decision on Petition
Filing Date: June 6, 2006 :
Attorney Docket No. 42P14525 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 3, 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 May 18, 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 June 19, 2005. A Notice of Abandonment was mailed on November 29, 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.

Technology Center Art Unit 2182 will be informed of the instant decision and the application, including the papers filed March 3, 2006, 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

#5 DW

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OFFICE OF THE DIRECTOR
TC 3600

Ilya Zborovsky
6 Schoolhouse Way
Dix Hills, NY 11746

In re Application of:
William Molino, et al.
Serial No. 10/456,188
Filed: June 6, 2003
For: CONVERTIBLE PENDANT JEWELRY

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S HEALTH)

This is a decision on the petition filed August 11, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the procedure set forth in MPEP 708.02, Section III: Applicant's Health. There is no fee for this petition. The delay in deciding this petition is regretted.

A grantable petition to make an application special under 37 C.F.R. 1.102(c), MPEP 708.02, Section III requires evidence that the state of health of the applicant is such that he might not be able to assist in the prosecution of the application if it were to run it's normal course.

The petition includes a statement from the applicant's doctor attesting to the fact that William Molino was diagnosed with cancer of the bladder and might not be able to assist in the prosecution of the application if the state of his health were to run it's normal course.

For the above stated reasons, the petition is **GRANTED**.

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

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

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

SNM/cps: 12/16/03

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MISKIN & TSUI-YIP LLP
1350 BROADWAY, SUITE 802
NEW YORK NY 10018

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OFFICE OF PETITIONS

In re Patent No. 6,789,395 :
Issue Date: September 14, 2004 :
Application No. 10/456,188 : DECISION ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 681-P-001 :

This is a decision on the petition under 37 CFR 1.378(c), filed March 2, 2009 and again on March 3, 2009 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on September 15, 2008 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

Currently, the person signing the instant petition is not the power of attorney or authorized agent to prosecute this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. Further, the address given on the petition differs from the new address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: I. Zborovsky
6 Schoolhouse Way
Dix Hills, N.Y. 11746

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.

Walter J.Tencza Jr.
Suite 210
100 Menlo Park
Edison NJ 08837

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JAN 27 2010

In re Patent No. RE40015 :
Issue Date: 01/22/2008 :
Application Number: 10/456226 : NOTICE
Filing or 371(c) Date: 06/06/2003 :
Attorney Docket Number: BELLIVEAU - 16 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on November 6, 2009.

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 application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

DWood
Douglas Wood
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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SAND & SEBOLT
AEGIS TOWER, SUITE 1100
4940 MUNSON STREET, NW
CANTON, OH 44718-3615

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DEC 20 2004

OFFICE OF PETITIONS

In re Application of	:	
Jeremy A. Lowder, et al.	:	
Application No. 10/456,231	:	NOTICE
Filed: June 5, 2003	:	
Attorney Docket No. 1423001US1AP	:	

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

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

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

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3201.

This file is being referred to Technology Center 3724 to await the response to the Office action mailed October 25, 2004.

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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MCDERMOTT WILL & EMERY
11682 EL CAMINO REAL
SUITE 400
SAN DIEGO CA 92130-2047

MAILED

JUL 14 2009

OFFICE OF PETITIONS

In re Patent No. 7,166,716 :
Issue Date: January 23, 2007 :
Application No. 10/456,238 : DECISION ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 066821-0213 :

This is a decision on the "PETITION TO CORRECT ASSIGNEE DATA UNDER 37 CFR 3.81", filed June 9, 2009.

The petition is **GRANTED**.

An application may issue in the name of an assignee rather than the applicant if requested prior to issuance of a patent.[1] However, in the event the request is not made prior to issuance, a Certificate of Correction under 37 CFR 1.323 may be requested. A request for a Certificate of Correction under 37 CFR 1.323 to correct the assignee's name will not be granted unless a petition under 37 CFR 3.81(b) is granted. Such request under 37 CFR 3.81(b) should include:

(A) the processing fee required by 37 CFR 1.17(i);

(B) a request for issuance of the application in the name of the assignee, or a request that a patent be corrected to state the name of the assignee;

(C) a statement that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent; and

[1] See 37 CFR 3.81.

(D) a request for a certificate of correction under 37 CFR 1.323 accompanied by the fee set forth in 37 CFR 1.20(a).[2]

Receipt of the $130 processing fee set forth in 37 CFR 1.17(i) and the $100 fee for the Certificate of Correction set forth in 37 CFR 1.20(a) is acknowledged.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

[2] MPEP 307.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MARK O. GLUT
NAVAL AIR SYSTEMS COMMAND, AIR-11.2
UNIT IP, B2272/S257
47123 BUSE RD.
PATUXENT RIVER, MD 20670

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SEP 0 9 2009

OFFICE OF PETITIONS

In re Patent No. 6,767,015
Issue Date: July 27, 2004
Application No. 10/456,243
Filed: June 5, 2003
Attorney Docket No. NC 84,636

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed July 24, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 27, 2008, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

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 Diane Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: CHRISTOPHER A. MONSEY
300 HWY 361, BLDG 2, CODE OOL
CRANE, IN 47522

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02/22/06

TO SPE OF : ART UNIT 3679

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/456247** Patent No.: **6896244**

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**.

[signature]

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.

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

Comments: REQUEST APPROVED.

[signature]

[signature] 3679

SPE **Art Unit**

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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SCHACHT LAW OFFICE, INC.
SUITE 202
2801 MERIDIAN STREET
BELLINGHAM WA 98225-2412

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SEP 17 2007

OFFICE OF PETITIONS

In re Patent No. 6,896,244 :
Issue Date: May 24, 2005 :
Application No. 10/456,247 : DECISION DISMISSING PETITION
Filed: June 5, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. P214329KRU :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 2, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed Application No. 29/067,042, filed February 27, 1997.

The petition is **DISMISSED**.

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

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

The instant petition lacks item(s) (3) three above.

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

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

SCHACHT LAW OFFICE, INC.
SUITE 202
2801 MERIDIAN STREET
BELLINGHAM WA 98225-2412

COPY MAILED

AUG 20 2008

In re Patent No. 6,896,244 : DECISION GRANTING PETITION
Issue Date: May 24, 2005 : UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/456,247 : REQUEST FOR CERTIFICATE OF
Filed: June 5, 2003 : CORRECTION
Attorney Docket No. P214329KRU :

This is a decision on the renewed petition, filed December 17, 2007, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to prior-filed Application No. 29/067,042, filed February 27, 1997, 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 nonprovisional 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 June 5, 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 a prior-filed nonprovisional 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) 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 to the above-noted, prior-filed nonprovisional 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 nonprovisional application, accompanies this decision on petition.

It is noted that a Certificate of Correction for the above matters was issued on December 5, 2006.

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

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
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/456,247	06/05/2003	3679	1912	P214329KRU	42	7

CONFIRMATION NO. 7976

CORRECTED FILING RECEIPT

30662
SCHACHT LAW OFFICE, INC.
SUITE 202
2801 MERIDIAN STREET
BELLINGHAM, WA 98225-2412

Date Mailed: 08/20/2008

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)

Richard Boroviak, Oakville, CANADA;

Power of Attorney:
Michael Schacht--33550

Domestic Priority data as claimed by applicant

This application is a CON of 09/976,380 10/11/2001 ABN which is a CIP of 29/067,042 02/27/1997 PAT D,520,349

Foreign Applications
CANADA 1996-2618 11/26/1996

If Required, Foreign Filing License Granted: 07/17/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/456,247**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

GATE BRACKET SYSTEMS AND METHODS

Preliminary Class

256

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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KENNEDY COVINGTON LOBDELL & HICKMAN. LLP
214 N. TRYON STREET
HEARST TOWER, 47TH FLOOR
CHARLOTTE, NC 25202

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DEC 17 2003

OFFICE OF PETITIONS

In re Application of	:	
Richard M. Carlson	:	
Application No. 10/456,253	:	DECISION GRANTING PETITION
Filed: June 6, 2003	:	UNDER 37 CFR 1.47(b)
For: DIGITAL WINDOW FOR PHOTOELECTRIC SENSORS	:	

This is in response to the "Petition Under 37 CFR 1.47(b)," filed October 28, 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 statements of facts by the attorney of record, James D. Wright, and Lisa J. Shealy of Telco 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 Telco has a proprietary interest in the above-identified application with the copy of the "Confidentiality and Assignment of Inventions Agreement," showing that the inventor had an obligation to assign any patent rights to Telco. The petition fee has been paid. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and demonstrated that petitioner has shown that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(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

Richard M. Carlson
5911 Leatherwood Lane
Harrisburg, NC 28075

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DEC 17 2003

OFFICE OF PETITIONS

In re Application of
Richard M. Carlson
Application No. 10/456,253
Filed: June 6, 2003
For: DIGITAL WINDOW FOR PHOTOELECTRIC SENSORS

Dear Richard M. Carlson:

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

KENNEDY COVINGTON LOBDELL & HICKMAN. LLP
214 N. TRYON STREET
HEARST TOWER, 47TH FLOOR
CHARLOTTE, NC 25202

#4

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TECHNOLOGY CENTER 2100

Paper No. 4

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

In re Application of: Nakayama, et al.
Application No. 10/456,256
Filed: June 6, 2003
For: DESTAGING METHOD FOR STORAGE APPARATUS SYSTEM, AND DISK CONTROL APPARATUS, STORAGE APPARATUS SYSTEM AND PROGRAM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the petition to make special under 37 C.F.R. §102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, filed on August 16, 2004.

The Petition is **GRANTED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

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

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

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

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

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

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

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

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

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

BLJ: 9/27/04

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OFFICE OF PETITIONS

LAW OFFICE OF KENNETH A. MURRAY, JR.
P.O. BOX 2188
DAVIS CA 95617

In re Application of :
TUPIN JR., Joe Paul et al. :
Application No. 10/456,290 : DECISION ON PETITION
Filed: June 04, 2003 : TO WITHDRAW
Attorney Docket No. **LFWV018** : 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 07, 2009.

The request is **APPROVED**.

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

The request was signed by Kenneth Murray on behalf of all attorneys of record who are associated with customer No. 59273. 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 address of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor.

There is an outstanding Office action mailed November 18, 2008 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **JOE PAUL TUPIN, JR.**
9725 RIM ROCK CIRCLE
LOOMIS, CA 95650

cc: **LIFEWAVE, INC.**
4616 ROSEVILLE ROAD
SUITE 109
NORTH HIGHLANDS, CA 95660

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United States Patent and Trademark Office
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DEC 1 1 2009

OFFICE OF PETITIONS

DAVID L KEIGLEY
2008 RESERVATION RD
GULF BREEZE FL 32563

In re Patent No. 6,892,487	:	
Issue Date: May 17, 2005	:	
Application No. 10/456,294	:	DECISION ON PETITION
Filed: June 9, 2003	:	

This is a decision on the petition to reinstate an expired patent under 37 CFR 1.378(c), filed August 3, 2009.

The petition under 37 CFR 1.378(c) is **GRANTED**.

The above-identified patent issued May 17, 2005. Accordingly, the first maintenance fee could have been paid during the period from May 17, 2008 through November 17, 2008 without surcharge, or with a late payment surcharge during the period from November 18, 2008 through May 17, 2009. No maintenance fee having been received, the patent expired on May 18, 2009.

Since the instant petition was filed 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 in this case is accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

Receipt of the $1,640 petition surcharge and the $490 maintenance fee is acknowledged.

The Change of Correspondence Address has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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Paper No. 5

HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON, CT 06484-6212

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JAN 2 0 2004

OFFICE OF PETITIONS

In re Application of:	:	
Phillip G. Seminara,	:	
William R.Lyons, Cecil Brown and	:	DECISION REFUSING
Franklin Anthony Hobub	:	STATUS
Application No. 10/456,349	:	UNDER 37 CFR 1.47(a)
Filed: June 6, 2003	:	
Title of Invention:	:	
POSITION ASSURED CONNECTOR	:	

This is in response to a petition under 37 CFR 1.47(a), filed September 29, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 6, 2003, without a fully executed oath or declaration. This Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice") on July 29, 2003, requiring, *inter alia*, a fully executed oath or declaration and a late filing fee, oath or declaration and surcharge.

In response to the Notice, Applicant files the instant petition, supported by a Statement of Facts to Support Petition Under 37 CFR 1.47(b), wherein Applicant avers that on August 6, 2003, a letter was sent to the nonsigning inventor at his last known address. A review of the letter reveals that a Declaration form

and an Assignment form for the instant application was enclosed with the letter.

Applicable Law

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

As to item (1), where it is alleged that an applicant refuses to join an application, the applicant must establish that the nonsigning inventor was presented with the application for signature. The Manual of Patent Examining Procedure ("MPEP") states that

> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

MPEP 409.03(d).

While the petition avers that the nonsigning inventor refuses to sign the Declaration and Power of Attorney, the petition does not aver that the application (specification, claims and drawings) was sent to the nonsigning inventor. Accordingly, where it is alleged that an inventor refuses to join an application, the MPEP requires that a copy of the application be

sent to the last known address of the nonsigning inventor. See, MPEP 409.03(e).

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

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

By FAX: (703) 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
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Paper No. 7

HARRINGTON & SMITH
4 RESEARCH DRIVE
SHELTON, CT 06484-6212

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MAR 0 4 2004

OFFICE OF PETITIONS

In re Application of :
Phillip G. Seminara, :
William D. Lyons, Cecil Brown :
And Franklin Anthony Hobub :
Application No. 10/456,349 :
Filed: June 6, 2003 : DECISION GRANTING
Title of Invention: POSITION : STATUS UNDER
ASSURED CONNECTOR : 37 CFR 1.47(a)

This Decision is in response to a request for Reconsideration of Petition Under 37 C.F.R. 1.47(a) [1], filed January 28, 2004, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor. The delay in treating this petition is regretted[2].

The petition is **granted**.

Background:

A petition, filed September 29, 2003, was dismissed in a Decision mailed January 20, 2004, for failing to meet the requirements of a grantable petition under 37 CFR 1.47(a). The petition was supported by a statement of facts, wherein applicant averred that a letter dated August 6, 2003, was sent to the nonsigning inventor at his last known address. A review of the letter revealed that a declaration and assignment form were sent to the inventor. Applicant was advised that, before a

[1] The original petition, filed September 28, 2003, was erroneously filed under 37 CFR 1.147(b). Applicant is advised that a petition under 37 CFR 1.47(b) is filed to allow a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, to make application on behalf of and as agent for all inventors. The original petition was thus properly treated under 37 CFR 1.47(a).

[2] The instant Request for Reconsideration includes header information that does not match the above-identified application; however, a reading of the argument in the petition indicates that the instant Request for Reconsideration is intended for the above-identified application. Moreover, the Supplemental Statement of Facts to Support Petition Under 37 CFR 1.47(a), filed with the instant petition, identifies the above-identified application. Accordingly, the delay in treating this Request for Reconsideration was due in part to incorrectly matching the Request for Reconsideration to the application identified on the Request for Reconsideration. If this is an incorrect assumption, Applicant must notify this Office immediately.

refusal to join in the application can be alleged, the inventor must be presented with a copy of the application for review.

Applicant files the instant Request for Reconsideration wherein Applicant argues that the original Decision was incorrect. The basis for this argument is Applicant's assertion that "[t]he Statement of Facts...' filed with the petition stated that the letter of August 6, 2003 and 'documents referred to in the letter' were sent to the inventor. The attached copy of the August 6, 2003 letter states 'above identified patent application (copy enclosed)' ". This putatively demonstrates that the application was sent to the nonsigning inventor.

In order to complete the record, the entire sentence from the August 6, 2003 letter is quoted as follows: "Enclose[d] is a Declaration form and an Assignment form for the above-identified patent application (copy enclosed) which was filed with the US Patent and Trademark Office on June 6, 2003." It was therefore at best unclear as to whether a copy of the Declaration form and an Assignment form for the above-identified patent application were inclosed, or a copy of the patent application along with a Declaration form and an Assignment form for the above-identified patent application were enclosed with the letter.

With the instant Request for Reconsideration and Supplemental Statement of Facts to Support Petition, Applicant has clarified that a copy of the patent application was sent to the nonsigning inventor.

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, Phillip G. Seminara, 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 application file is being returned to the Office of Initial Patent Examination for continued processing.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Mr. Phillip G. Seminara
5160 Cherokee
Dearborn Heights, MI 48125

In re Application of :
Phillip G. Seminara, :
William D. Lyons, Cecil Brown :
And Franklin Anthony Hobub :
Application No. 10/456,349 :
Filed: June 6, 2003 :
Title of Invention: POSITION :
ASSURED CONNECTOR :

LETTER

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MAR 0 4 2004
OFFICE OF PETITIONS

Dear Mr. Seminara:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0014. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Derek L. Woods
Petitions Attorney
Office of Petitions

cc: HARRINGTON & SMITH
4 RESEARCH DRIVE
SHELTON, CT 06484-6212

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DIW 08-04

Kevin A. Norman
2609 Hastings Drive
Belmont CA 94002

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JUN 2 5 2004

OFFICE OF PETITIONS

In re Application of
Patel et al.
Application No. 10/456,356
Filed: 5 June, 2003
For: Sample and Load Scheme for Observability Internal Nodes in a PLD

Dear Mr. Norman:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

TOWNSEND AND TOWNSEND AND CREW LLP/ 015114
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO CA 94111-3834

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Paper No. 6

TOWNSEND AND TOWNSEND AND CREW LLP/ 015114
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO CA 94111-3834

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JUN 2 5 2004

OFFICE OF PETITIONS

In re Application of :
Patel and Norman : DECISION ACCORDING STATUS
Application No. 10/456,356 : UNDER 37 CFR 1.47(a)
Filed: 5 June, 2003 :
Atty Docket No. 015114-044621US :

This is in response to the petition filed under 37 CFR 1.47(a) on 15 March, 2004.

The petition is **GRANTED**.

Petitioners have shown that non-signing inventor Norman cannot be located. Specifically, petitioners have shown that a cover letter and declaration sent to the last known address of the non-signing inventor was returned as undeliverable. Additionally, petitioners have shown that diligent efforts were made to locate a new address for non-signing joint inventor Norman. Despite diligent efforts, Norman could not 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 inventors at the addresses given in the declaration. Notice of the filing of this application will also be published in the Official Gazette.

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

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

Mail Date: 04/23/2010

Applicant	: Rakesh H. Patel	: DECISION ON REQUEST FOR
Patent Number	: RE40894	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/456,356	: OF WYETH
Filed	: 06/05/2003	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

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OFFICE OF PETITIONS

In re Application of :

Bulaj, et al. :

Application No. 10/456,375 :

Filed: June 5, 2003 :

Attorney Docket No. June 9, 2003

DECISION ON PETITION

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

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 27, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time pursuant to 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on July 28, 2006.

The amendment filed October 30, 2006, is noted and made of record.

The application is being forwarded to Technology Center 1600, GAU 1631 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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OCT 09 2009

OFFICE OF PETITIONS

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

In re Application of :
Faska et al. :
Application No. 10/456,388 : ON APPLICATION FOR
Filed: June 5, 2003 : PATENT TERM ADJUSTMENT
Atty. Docket No. 088245-4700 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed July 10, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand one hundred ninety-nine (1,199) days, not five hundred seventy-one (571) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

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[1] For example, if 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.

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

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

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APR 29 2010

OFFICE OF PETITIONS

In re Patent No. 7,620,330	:	DECISION ON REQUEST FOR
Faska et al.	:	RECONSIDERATION OF
Issue Date: November 17, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/456,388	:	NOTICE OF INTENT TO ISSUE
Filed: June 5, 2003	:	CERTIFICATE OF CORRECTION
Atty Docket No. 088245-4700	:	

This is a decision on the petition filed on January 14, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the Office recalculate the patent term adjustment indicated on the above-identified patent.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **one thousand two hundred five (1205) days.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on June 6, 2006, and ends on May 27, 2008, the day before the RCE was filed, and is 722 days, not 723 days as calculated by patentees in their previous petition of July 10, 2009. See 35 U.S.C. 154(b)(1)(B)(i).

Accordingly, the patent term adjustment is 1205 days (771 days of A delay + 722 days of B delay - 95 days of overlap - 193 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a

certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office will charge patentees' Deposit Account the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the request for reconsideration of patent term adjustment. No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred five (1205) days.**

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT: 7,620,330 B2

DATED: Nov. 17, 2009 **DRAFT**

INVENTOR(S): Faska 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 578 days

Delete the phrase "by 578 days" and insert – by 1205 days--

Day : Wednesday

PALM INTRANET

Date: 4/28/2010
Time: 11:29:32

PTA Calculations for Application: 10/456388			
Application Filing Date:	06/05/2003	PTO Delay (PTO):	771
Issue Date of Patent:	11/17/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	193
Post-Issue Petitions:	0	Total PTA (days):	1205
PTO Delay Adjustment:	627		

File Contents History

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74	04/28/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	627		
70.5	10/28/2009	PTA 36 MONTHS			
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69	10/16/2009	EXPORT TO FINAL DATA CAPTURE			
68	10/15/2009	DISPATCH TO FDC			
67	10/09/2009	MAIL-PETITION DECISION - DISMISSED			
66	10/09/2009	PETITION DECISION - DISMISSED			
65	07/16/2009	RESPONSE TO REASONS FOR ALLOWANCE			
64	07/10/2009	PETITION ENTERED			
63	07/13/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
62	07/10/2009	ISSUE FEE PAYMENT VERIFIED			
61	07/10/2009	ISSUE FEE PAYMENT RECEIVED			
60	05/20/2009	FINISHED INITIAL DATA CAPTURE			
59	04/20/2009	EXPORT TO INITIAL DATA CAPTURE			
56	04/16/2009	MAIL NOTICE OF ALLOWANCE			
55	04/14/2009	ISSUE REVISION COMPLETED			
54	04/14/2009	DOCUMENT VERIFICATION			
53	04/14/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
52	04/13/2009	EXAMINER'S AMENDMENT COMMUNICATION			
51	04/13/2009	NOTICE OF ALLOWABILITY			
50	04/08/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
46	04/08/2009	DATE FORWARDED TO EXAMINER			
45	03/05/2009	RESPONSE AFTER EX PARTE QUAYLE ACTION			

44	01/06/2009	MAIL EX PARTE QUAYLE ACTION (PTOL - 326)			
43	01/05/2009	EX PARTE QUAYLE ACTION			
42	10/25/2008	DATE FORWARDED TO EXAMINER			
41	09/26/2008	RESPONSE AFTER NON-FINAL ACTION			
40	06/27/2008	MAIL NON-FINAL REJECTION			
39	06/23/2008	NON-FINAL REJECTION			
38	06/17/2008	DATE FORWARDED TO EXAMINER			
37	05/28/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
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30	05/28/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
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28	01/29/2008	EMAIL NOTIFICATION			
27	01/28/2008	MAIL FINAL REJECTION (PTOL - 326)			
26	01/22/2008	FINAL REJECTION			
25	11/04/2007	DATE FORWARDED TO EXAMINER			
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16	09/05/2006	NON-FINAL REJECTION			
15	07/24/2006	CASE DOCKETED TO EXAMINER IN GAU			
14	07/21/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	07/21/2006	CASE DOCKETED TO EXAMINER IN GAU			

12	02/27/2006	APPLICATION DISPATCHED FROM OIPE			
11	02/28/2006	APPLICATION IS NOW COMPLETE			
10	11/18/2003	ADDITIONAL APPLICATION FILING FEES			
9	11/18/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	11/18/2003	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
7	08/09/2004	CORRESPONDENCE ADDRESS CHANGE			
6	09/17/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	06/25/2003	CLEARED BY OIPE CSR			
2	06/20/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/05/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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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
10/456,391	06/05/2003	3641	1518	RAY-142J	15	58	4

CONFIRMATION NO. 6044

IANDIORIO & TESKA
INTELLECTUAL PROPERTY LAW ATTORNEYS
260 BEAR HILL ROAD
WALTHAM, MA 02451-1018

CORRECTED FILING RECEIPT

OC000000011839726

Date Mailed: 02/05/2004

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)

Richard M. Lloyd, Melrose, MA;
Ernest C. Faccini, Londonderry, NH;

Domestic Priority data as claimed by applicant

This application is a DIV of 09/938,022 08/23/2001 PAT 6,598,534
which claims benefit of 60/295,731 06/04/2001

Foreign Applications

If Required, Foreign Filing License Granted: 02/05/2004

Projected Publication Date: 03/25/2004

Non-Publication Request: No

Early Publication Request: No

Title

Warhead with aligned projectiles

Preliminary Class

102

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

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NOV 23 2009

OFFICE OF PETITIONS

In re Patent No. 7,541,446 :
Issued: June 2, 2009 :
Application No. 10/456,395 : PATENT TERM ADJUSTMENT
Filed: June 5, 2003 :
Dkt. No.: 085449-0174 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed July 28, 2009. This matter is being properly treated as an application for patent term adjustment pursuant to 37 CFR 1.705(d).

Patentees request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until a final decision is rendered in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). 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**.

Patentees further request correction of the patent term adjustment from 349 days to 498 days. Patentees request this correction on the sole basis that the Office took in excess of three years to issue the above-referenced patent.

The application for patent term adjustment (PTA) under 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,541,446 on June 2, 2009. The patent issued with a patent term adjustment of 349 days. Patentee argues that in view of Wyeth v. Dudas, supra, the patent is entitled to an adjustment of 498 days (579 days pursuant to 35 USC 154(b)(1)(A) *plus* 149 days pursuant to 35 USC 154(b)(1)(B) *less* 230 days pursuant to 37 CFR 1.704).

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.

The Office asserts that as of the filing of the request for continued examination (RCE) on October 25, 2007, the application was pending three years and 506 days (June 6, 2006 to October 24, 2007). The Office agrees that certain action was not taken within the specified time frame,

and thus, the application was pending 14 months and 579 days prior to the mailing of the restriction requirement on March 7, 2006. At issue is whether patentees should accrue 506 days of patent term adjustment for the Office taking in excess of three years to issue the patent, as well as 579 days for Office failure to take a certain action within a specified time frame (or examination delay).

The Office contends that the period of 50 days of delay in issuance of the patent under 37 CFR 1.702(b) overlaps with the period of 579 days of examination delay under 37 CFR 1.702(a). 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:

35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

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

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

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[1] Likewise, 37 CFR 1.703(f) provides that:

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

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

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(1)(A) is the period during which the application was pending before the Office beginning on the application filing date under 35 U.S.C. 111(a), June 5, 2003, and ending on October 24, 2007, the day before the date that the RCE was filed on October 25, 2007.

Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1), the application was pending 14 months and 579 days prior to the issuance of the restriction requirement on March 7, 2006. Pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b), the application was pending three years and 506 days at the time that the RCE was filed on October 25, 2007.

The 506 days of delay in issuance of the patent under 37 CFR 1.702(b) overlap with the 579 days of patent term adjustment under 37 CFR 1.702(a). Entry of both the 506 days and the 579 days is neither permitted nor warranted given that 579 days is the actual number of days issuance of the patent was delayed.

Accordingly, at issuance, having considered the 506 days of Office delay under the three-year pendency provision in conjunction with the 579 days of examination delay, reduced 230 days for applicants' delay, the Office properly entered 702 days of patent term adjustment.

In view thereof, no adjustment to the patent term will be made.

No additional fees are due in connection with this matter.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Pitney Bowes Inc.
Intellectual Property and Technology Law Dept.
35 Waterview Drive
P.O. Box 3000
Shelton, CT 06484

Mail Date: 04/21/2010

Applicant	: Leon A. Pintsov	: DECISION ON REQUEST FOR
Patent Number	: 7613660	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/456,416	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1915** 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

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

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OCT 27 2003

OFFICE OF PETITIONS

In re Application of
Lin and Behzad
Application No. 10/456,417
Filed: June 6, 2003
Attorney Docket No. 49231/PAN/B600
For: RADIO FREQUENCY VARIABLE GAIN AMPLIFIER WITH LINEARITY INSENSITIVE TO GAIN

: 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 16, 2003).

The petition is granted.

Petitioner has shown that the non-signing inventor, Li Lin, has constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Attorney Peter A. Nichols and accompanying exhibits establish that the inventor was twice mailed the application papers, including the specification, claims and drawings and declaration, but the inventor failed to respond to both requests that she sign the declaration. Petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

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

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

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

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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LI LIN
19970 HERRIMAN AVENUE
SARATOGA CA 95070

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OCT 27 2003

OFFICE OF PETITIONS

In re Application of
Lin and Behzad
Application No. 10/456,417
Filed: June 6, 2003
Attorney Docket No. 49231/PAN/B600
For: RADIO FREQUENCY VARIABLE GAIN AMPLIFIER WITH LINEARITY INSENSITIVE TO GAIN

LETTER

Dear Ms. Lin:

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

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OFFICE OF PETITIONS
ON PETITION

In re Application of :
Richard O. Snyder et. al :
Application No. 10/456,423 :
Filed: June 5, 2003 :
Attorney Docket No.: 5853-258

This is a decision on the petition filed August 25, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned for failure to timely reply to the Notice to File Missing Parts mailed August 13, 2005. A shortened statutory period of three months was set for replying. No extensions of time having been requested prior to the abandonment, this application became abandoned November 14, 2003. Accordingly, a Notice of Abandonment was mailed February 17, 2004.

---

[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)).

Petitioners seek to revive this application for purposes of continuity with continuation application 10/798,192, filed March 11, 2004 however, the filing of a continuation application is not a proper response to a Notice to File Missing Parts. Therein, the response in the form of an executed oath or declaration from the instant application or an unexecuted oath or declaration with a petition under 37 CFR 1.47 would be required.

Additionally, please be advised that while petitioners sought to file a five month extension of time, retroactive extensions of time are not permissible. 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 $1080.00 extension of time fee submitted with the petition on August 17, 2005, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 50-0951.

Petitioner must submit a proper reply to the final Office action mailed on October 22, 2004, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

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

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

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

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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In re Application of :
Richard O. Snyder et. al :
Application No. 10/456,423 :
Filed: June 5, 2003 :
Attorney Docket No.: 5853-258

This is a decision on the petition filed August 25, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **DISMISSED**.

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

This application became abandoned for failure to timely reply to the Notice to File Missing Parts mailed August 13, 2005. A shortened statutory period of three months was set for replying. No extensions of time having been requested prior to the abandonment, this application became abandoned November 14, 2003. Accordingly, a Notice of Abandonment was mailed February 17, 2004.

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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)).

Petitioners seek to revive this application for purposes of continuity with continuation application 10/798,192, filed March 11, 2004 however, the filing of a continuation application is not a proper response to a Notice to File Missing Parts. Therein, the response in the form of an executed oath or declaration from the instant application or an unexecuted oath or declaration with a petition under 37 CFR 1.47 would be required.

Additionally, please be advised that while petitioners sought to file a five month extension of time, retroactive extensions of time are not permissible. 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 $1080.00 extension of time fee submitted with the petition on August 17, 2005, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 50-0951.

Petitioner must submit a proper reply to the final Office action mailed on October 22, 2004, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

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

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

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

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

Patricia Faison-Ball
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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OCT 0 2 2006

OFFICE OF PETITIONS

AKERMAN SENTERFITT
SUITE #400
222 LAKEVIEW AVENUE
WEST PALM BEACH FL 33401-6183

In re Application of :
Richard O. Snyder et. al :
Application No. 10/456,423 : ON PETITION
Filed: June 5, 2003 :
Attorney Docket No.: 5853-258

This is a decision on the renewed petition filed February 13, 2006 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice to File Missing Parts mailed August 13, 2003. A shortened statutory period of three months was set for replying. No extensions of time having been requested prior to the abandonment, this application became abandoned November 14, 2003. Accordingly, a Notice of Abandonment was mailed September 14, 2004. A petition to revive filed August 25, 2005 was dismissed in a decision mailed November 14, 2005 because a continuation application, 10/798,192, was filed March 11, 2004 however, the filing of a continuation application is not a proper response to a Notice to File Missing Parts.

Comes now petitioner with an executed oath or declaration in response to the Notice to File Missing Parts mailed August 13, 2003.

---

[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)).

The petition fee was paid with the petition filed August 25, 2005 so no additional petition fees are due. However, the Notice to File Missing Parts does require a late oath or declaration surcharge. Thus, the surcharge in the amount of $65 as set forth in 37 CFR 1.16(f) has been charged to deposit account no. 50-0951.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Robert H. Roche
CTRL Systems, inc.
1004 Littlestown Pike, Suite H
Westminster MD 21157-3026

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JUN 21 2007

OFFICE OF PETITIONS

In re Application of :
Buyalsky : DECISION ON PETITION
Application No. 10/456,427 :
Filed: June 6, 2003 :
For: METHOD OF CONVERTING AND :
AMPLIFYING A WEAK PNEUMATIC :
SIGNAL INTO AN ENHANCED :
HYDRAULIC SIGNAL (JPHA METHOD) :

This is a decision on the petition to withdraw the holding of abandonment, filed May 10, 2007, under 37 CFR 1.181.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

In accordance with 37 CFR 1.33(b), amendments and other papers, including petitions, except for written assertions pursuant to § 1.27(c)(2)(ii), filed in the application must be signed by: (1) a patent practitioner of record appointed in compliance with § 1.32(b); (2) a patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34; (3) an assignee as provided for under § 3.71(b); or (4) all of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The instant petition fails to satisfy 37 CFR 1.33(b). Accordingly, treatment on the merits of the instant petition is precluded.

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

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

By facsimile: (571) 273-8300

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Robert H. Roche
CTRL Systems, inc.
1004 Littlestown Pike, Suite H
Westminster MD 21157-3026

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SEP 17 2007

OFFICE OF PETITIONS

In re Application of :
Buyalsky : DECISION ON PETITION
Application No. 10/456,427 :
Filed: June 6, 2003 :
For: METHOD OF CONVERTING AND :
AMPLIFYING A WEAK PNEUMATIC :
SIGNAL INTO AN ENHANCED :
HYDRAULIC SIGNAL (JPHA METHOD) :

This is a decision on the renewed petition to withdraw the holding of abandonment, filed July 5, 2007, under 37 CFR 1.181.

The petition is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned April 18, 2005 for failure to timely submit a proper reply to the Notice mailed March 17, 2005. The Notice set a one month non-extendible statutory period of time for reply. A reply was filed April 15, 2005, but did not satisfy the Notice. Notice of Abandonment was mailed April 16, 2007.

Petitioners argue that timely responses have been submitted in response to communications mailed by the Office.

The Notice mailed March 17, 2005 set a one month non-extendible period of time for reply, making a proper reply due on or before April 17, 2005. The reply submitted April 15, 2005 failed to provide the corrective action required in the Notice mailed March 17, 2005. Accordingly, the application became abandoned as a matter on law on April 15, 2005.

Absent establish to establish that a reply that provided the corrective action required by the Notice mailed March 17, 2005 was received in the Office on or before April 17, 2005, the holding of abandonment cannot be withdrawn.

Petitioner further states that "in accordance with 37 CFR § 1.137 (B)(3) the applicant wishes to consider the conclusion that the delay caused by minor discrepancies among Office Actions in 2005 and by abandonment of 11/25/2005 was unintentional."

Hence, petitioner may wish to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply. *See*, enclosure).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

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

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

By facsimile: (571) 273-8300

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure

PTO/SB/64 (04-07)
Approved for use through 09/30/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor:

Application No.: Art Unit:

Filed: Examiner:

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1.Petition fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity – fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____(identify type of reply):

☐ has been filed previously on _____.
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

_____ Signature

_____ Date

_____ Typed or printed name

_____ Registration Number, if applicable

_____ Address

_____ Telephone Number

_____ Address

Enclosures:
☐ Fee Payment
☐ Reply
☐ Terminal Disclaimer Form
☐ Additional sheets containing statements establishing unintentional delay
☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

_____ Date

_____ Signature

_____ Typed or printed name of person signing certificate

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

Robert H. Roche
CTRL Systems, inc.
1004 Littlestown Pike, Suite H
Westminster MD 21157-3026

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MAR 28 2008

OFFICE OF PETITIONS

In re Application of
Buyalsky
Application No. 10/456,427
Filed: June 6, 2003
For: METHOD OF CONVERTING AND AMPLIFYING A WEAK PNEUMATIC SIGNAL INTO AN ENHANCED HYDRAULIC SIGNAL (JPHA METHOD)

DECISION ON PETITION

This is a decision on the petition renewed under the unintentional provisions of 37 CFR 1.137(b), filed October 16, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely submit a proper reply to the non-final Office action mailed September 21, 2004. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed April 16, 2007.

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 is being forwarded to Technology Center 3700 for processing of the reply submitted April 18, 2006.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

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OFFICE OF PETITIONS

LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6780

In re Application of :
Koukol, et al. :
Application No. 10/456,430 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 216616 :

This is a decision on the papers styled, "Response To Notice Of Omitted Item(s) In a Nonprovisional Application Including Petition For Filing Date," filed on September 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 June 6, 2003, including Figures 7-9, as described in the specification.

The application was filed on June 6, 2003. However, on August 15, 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 7-9 as described in the specification appear to have been omitted.

In response, on September 15, 2003, the instant petition and a copy of Figures 7-9 as described in the specification were submitted. The papers were accompanied by a copy of applicant's postcard receipt that acknowledges receipt of eight (8) sheets of drawings on June 6, 2003. A review of the application file indicates the presence of only five (5) sheets of drawings with the sheets containing Figures 7-9 missing. It is assumed that missing sheets of drawings containing Figures 7-9 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 June 6, 2003, using the copy of Figures 7-9 as described in the specification, supplied on September 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

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

ROBINS & PASTERNAK
1731 EMBARCADERO ROAD
SUITE 230
PALO ALTO, CA 94303

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NOV 1 4 2003

OFFICE OF PETITIONS

In re Application of :
Cox, et al. :
Filed: June 5, 2003 : ON PETITION
Application No. 10/456,444 :
Atty. Dkt. No.: 8325-0030 (S30-US1) :

This decision in response to the petition under 37 CFR 1.182, filed September 25, 2003, in response to the "Notice of Incomplete Nonprovisional Application ("Notice") mailed July 30, 2003.

The application was submitted June 5, 2003. The Notice mailed July 30, 2003 by the Office of Initial Patent Examination indicated that the application had not been accorded a filing date because the application was deposited without drawings as required under 35 USC 113 (first sentence).

The Notice indicated the filing date of the application would be date of receipt of the omitted items. Any assertion that the omitted items were in fact submitted or are not necessary for a filing date must be by way of petition.

Petitioner acknowledges that the drawings were inadvertently omitted from the application as submitted June 5, 2003.

As stated in MPEP 601.01(f), it is the practice of the PTO to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence).

Moreover, MPEP 601.01(f) states that a nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing

figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the official file reveals that the application includes at least one method claim. In view of the above, the Notice mailed July 30, 2003 was mailed in error and is hereby withdrawn.

Accordingly, the petition is GRANTED.

The application will be processed with only the papers present on filing and is hereby accorded a filing date of June 5, 2003, without drawings as part of the original disclosure.

No fee is due in connection with this matter.

Petitioner is advised that Figures 1-3 as referenced in the instant petition were not received by the PTO. To avoid further delay in the examination of the application, a preliminary amendment amending the application to include the omitted figures should be submitted prior to the issuance of the first office action on the merits.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of June 5, 2003.

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GLOBAL LEGAL DEPARTMENT - IP
SYCAMORE BUILDING - 4TH FLOOR
299 EAST SIXTH STREET
CINCINNATI OH 45202

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OCT 2 0 2008

OFFICE OF PETITIONS

In re Application of	:	
Paul J. RENNIE et al.	:	
Application No. 10/456,465	:	DECISION ON PETITION
Filed: June 06, 2003	:	
Attorney Docket No. **9263**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 19, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 11, 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 March 12, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of arguments/remarks, (2) the petition fee of $1540, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action as of December 11, 2007 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 3747 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number 9263

First Named Inventor: Rennie, Paul John et al.

Application No.: 10/456,465 Art Unit: 1617

Filed: June 6, 2003 Examiner: Carter, Kendra D.

Title: Compositions for Prevention And Treatment of Cold and Influenza-like-Symptoms Comprising Chelated Zinc

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer – required for all utility applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee
   [X] Authorization is given to charge the required fee under 37 CFR 1.17(m), and any additional fees that may be required in connection with submission of this petition, or to credit any overpayment, to Deposit Account No. 16-2480 in the name of The Procter & Gamble Company.

2. Reply and/or Issue Fee
   A. The reply to the last Communication from the Office in the form of Reply to Non-Final Office Action (identify type of reply):
      [X] has been filed previously on February 13, 2008 and a copy is enclosed herewith.

3. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and(D))].

09/19/2008
Date

/Kristin Kohler/
Signature

Telephone Number: (513) 983-1179

Kristin Kohler
Typed or printed name

Registration Number: 41,907

CUSTOMER NO.: 27752

Enclosures: [X] Copy of Reply Timely Filed on 02/13/2008
[X] Copy of Facsimile Transmittal Sheet dated 02/13/2008 with mistyped Serial No.
[X} Copy of USPTO Auto-Reply Facsimile Transmission Receipt dated 02/13/2008

RAM Fee History Query

Revenue Accounting and Management

Name/Number: 10456465 Total Records Found: 7

Start Date: Any Date End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
09/19/2008	00012563	4	1453	$1,540.00	09/19/2008	DA 162480
10/16/2007	00000040	1	1801	$810.00	10/15/2007	DA 162480
10/16/2007	00000041	1	1253	$1,050.00	10/15/2007	DA 162480
07/22/2004	00000059		8007	$20.00	07/16/2004	DA 162485
12/03/2003	00000126		8021	$40.00	12/03/2003	DA 162480
11/13/2003	00000003	1	1051	$130.00	09/30/2003	DA 162480
06/10/2003	00000089	1	1001	$750.00	06/06/2003	DA 162480

UNITED STATES PATENT AND TRADEMARK OFFICE

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

YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

COPY MAILED

SEP 25 2006

OFFICE OF PETITIONS

In re Application of :
Rene Michael Hoveling :
Application No.: 10/456,473 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No:2001-1015-1 :

This is in response to the petition under 37 CFR 1.137(b) filed June 26, 2006.

The petition is **dismissed.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the Notice of Allowance and Issue Fee Due mailed August 9, 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. The application became abandoned on November 10, 2004. A Notice of Abandonment was mailed on January 10, 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 requirement of item (1) above.

Item (1) above has not been satisfied because of the failure to file Form PTOL-85B with the instant petition. A copy of the form is enclosed. A completed Form PTOL-85B must accompany the renewed petition in order to be considered grantable.

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 matter may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTOL-85B

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 (703) 746-4000

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)

000466 7590 08/09/2004

YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202

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 (703) 746-4000, on the date indicated below.

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/456,473	06/09/2003	Rene Michael Hoveling	2001-1015-1	6024

TITLE OF INVENTION: DEVICE FOR MOVING PRODUCTS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	$1330	$300	$1630	11/09/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
DILLON JR, JOSEPH A	3651	198-345300

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,

(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.

1 _____
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 not claiming SMALL ENTITY status. See, e.g., 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)

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.

TRANSMIT THIS FORM WITH FEE(S)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

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NOV 0 6 2006

OFFICE OF PETITIONS

In re Application of

Rene Michael Hoveling

Application No. 10/456,473

Filed: June 9, 2003

Attorney Docket No. 2001-1015-1

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed September 29, 2006, to revive the above-identified application.

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

This application became abandoned for failure to respond in a timely manner to the Notice of Allowance and Issue Fee Due mailed August 9, 2004. The notice allowed a 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 November 10, 2004. A Notice of Abandonment was mailed on January 10, 2005. A petition under 37 CFR 1.137(b) was filed on June 26, 2006, and dismissed by a decision mailed September 25, 2006.

Form PTOL-85B, the issue fee payment and publication fee were received on September 29, 2006.

The application is being forwarded to the Office of Patent Publications for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

NIXON PEABODY LLP
401 9TH STREET NW
SUITE 900
WASINGTON DC 20004-2128

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FEB 18 2004

OFFICE OF PETITIONS

In re Application of
Shibata, et al.
Application No. 10/456,503
Filed: June 9, 2003
Attorney Docket No. 740756-2622

DECISION ON PETITION

This is a decision on the paper titled "Response to Notice of Omitted Items in a Nonprovisional Application", filed September 30, 2003, requesting that Figures 8A-8C(1) and 8C(2) of the drawings be incorporated by reference.

The petition is **DISMISSED AS INAPPROPRIATE**.

The application was filed on June 9, 2003. However, on August 4, 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 June 9, 2003, and informing applicants that the drawings of Figures 8A-8C(1) and 8C(2) described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners admit that Figures 8A-8C(1) and 8C(2) were inadvertently omitted. However, petitioners request that Figures 8A-8C(1) and 8C(2) 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. 09/653,535, the drawings of Figures 8A-8C(1) and 8C(2) are not new matter if they were a part of the disclosure of that application.

Applicants should submit an amendment seeking entry of Figures 8A-8C(1) and 8C(2) prior to the first Office action to avoid delays in the prosecution of the application. See MPEP § 601.01(d) and § 601.01(g).

Receipt of the $130 petition fee is acknowledged.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of June 9, 2003, including an indication in Office records that 42 figures of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703-305-0272.

Cliff by

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NIXON & PEABODY LLP
401 9TH STREET NW, SUITE 900
WASHINGTON, DC 20004-2128

COPY MAILED

SEP 14 2005

OFFICE OF PETITIONS

In re Application of :
Hiroshi Shibata et al :
Application No. 10/456,503 : DECISION GRANTING PETITION
Filed: June 9, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 740756-2622 :

This is a decision on the petition, filed September 13, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on March 4, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Apr-07

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

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APR 09 2007

OFFICE OF PETITIONS

In re Application of :
Kirkness et al. :
Application No. 10/456,511 : DECISION ON PETITION
Filed: 9 June, 2003 :
Atty Docket No. 2502585-991100 :

This is a decision on the petition filed on 9 January, 2007, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 21 May, 2006, for failure to timely submit a reply to the Office action requiring restriction and/or election mailed on 20 April, 2006, which set a one (1) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 6 December, 2006.

Petitioners have filed an amendment including an election with traverse as the required reply.

---

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional 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)).

This application is being referred to Technology Center Art Unit 1647 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 6/21/05

TO SPE OF : ART UNIT : 2815

SUBJECT : Request for Certificate of Correction on Patent No.: 6867107 B2

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

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

Virginia Tolbert

Thank You For Your Assistance

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

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

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

Comments:

I. Thomas — SPE

2815 — Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080325

DATE : March 25, 2008

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction on Patent No.: 7,209,572

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: /Bhavesh Mehta/ Art Unit 2624

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

Remailed

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/456,538	13-Feb-04	ARIF MASKATIA, ET AL.	ACR0083

Title: PORTABLE ELECTRONIC DEVICE WITH A SYNCHRONIZING UNIT

Art Unit	Paper Number

Correspondence Address:
MICHAEL D. BEDNAREK
1650 TYSONS BOULEVARD
MCLEAN, VA. 22102

PATENT & TRADEMARK OFFICE
MAILED

FEB 24 2004

LICENSING & REVIEW

RECEIVED
MAR 17 2004
TECHNOLOGY CENTER 2800

Please find attached a communication from the Examiner regarding the Petition for Retroactive License under 37 CFR 5.25.

UNITED STATES PATENT AND TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

Michael D. Bednarek
SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102

In re:	Maskatia et al	:	DECISION ON REQUEST
Serial No.:	10/456,538	:	UNDER 37 CFR 5.25
Filing date:	June 9, 2003		
Docket No:	ACR0083		

Title: **PORTABLE ELECTRONIC DEVICE WITH A SYNCHRONIZNING UNIT**

This is a decision on the petition filed on February 13, 2004 for retroactive foreign filing license.

37 CFR 5.25(a) requires the following:

1. A listing of each of the foreign countries in which the unlicensed patent application material was filed,
2. The dates on which the material was filed in each country,
3. A verified statement (oath or declaration) containing:
   i. An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,
   ii. A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and
   iii. An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and
4. The required fee (§ 1.17(h)).

The petition is denied at this time since the requirements of 37 CFR 5.25(a)(3)(iii) have not been met. Declarant, Ares Yang, avers that (a) it was known that the applicant's were US citizens and (b) the requirement of first obtaining a foreign filing license was known. In spite of this, Declarant avers that the Taiwanese application was filed. Therefore, it is unclear what "error" Declarant is claiming. The explanation in the

Declaration by Ares Yang does not suffice as an "error". The act of filing an application to obtain an earlier filing date does not suffice as an "error". Further, the Exhibit A, that is referenced in the Declaration is not in the papers as filed.

Accordingly, the provisions of 37 CFR 5.25 not having been fully met, the petition is denied, and in the absence of any response within **60 days** of the mailing date of this letter, such denial will be made final and the final action under 35 U.S.C. 185 will be taken. Extensions of time may be had under 37 C.F.R. 1.136(a).

Ian J. Lobo
Patent Examiner
(703) 306-4161

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

BROWDY AND NEIMARK
624 NINTH STREET NW
SUITE 300
WASHINGTON, DC 20001-5303

COPY MAILED

JAN 15 2004

OFFICE OF PETITIONS

In re Application of :
Yuan-Ting Wu et al :
Application No. 10/456,542 : NOTICE
Filed: June 9, 2003 :
Attorney Docket No. WU83 :

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 2655.

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

BINGHAM McCUTCHEN

O-1204-355-0252

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DATE: December 15, 2004

	NAME	FAX	PHONE
TO:	Office of Petitions Attn: Ms. Francis Hicks	(703) 872-9306	(571) 272-3218
FROM:	Gary D. Lueck Bingham McCutchen, LLP gary.lueck@bingham.com	(213) 680-6499	(213) 680-6813

PAGES: (INCLUDING THIS COVER PAGE): 1

RE: App. No. 29/168,280; May 19, 2003 Filing Date

Granted Petition for Application Number and May 19, 2003 Filing Date for continuation application claiming priority to App. No. 29/144,809.

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Suite 4400
355 South Grand Avenue
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90071-3106

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213.680.6499 fax

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Silicon Valley
Tokyo
Walnut Creek
Washington

Ms. Hicks,

I am in receipt of the decision granting the above-identified petition. For clarification, my statements concerning copies of the original application papers were based on my review of the contents of the patent application file. I do not have personal knowledge that the papers submitted were copies of the original application papers since I did not personally file the original application papers. The original application papers were filed on July 10, 2001 by David B. Sandelands, then of Christie, Parker & Hale, LLP. The application was subsequently prosecuted by Kathleen M. Olster, then of Christie, Parker & Hale, LLP, with the certifications of Elise D. Bray regarding the filing of various application papers. The file was transferred to Bingham McCutchen, LLP, my present firm, in March, 2003, and a continuation application based on the original application papers was filed by me on May 19, 2003.

Thank you.

Gary D. Lueck, Reg. No. 50,791

Best Available Copy

For transmission problems, please call (213) 680-6421

The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. If you are neither the intended recipient(s) nor a person responsible for the delivery of this transmittal to the intended recipient(s), you are hereby notified that any unauthorized reading, distribution, copying or disclosure of this transmittal is prohibited. If you have received this transmittal in error, please notify us immediately at (same telephone number as in first paragraph - will duplicate) and return the transmittal to the sender. Thank you.

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LA/40279159.1

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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 04/20/2010

Applicant	: Dominique Vadrot	: DECISION ON REQUEST FOR
Patent Number	: 7587384	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/456,561	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **751** 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. 7

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

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NOV 14 2003

OFFICE OF PETITIONS

In re Application of :
Anderson, et al. :
Application No. 10/456,576 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 03626.0019-01 :

This is a decision on the petition under 37 CFR 1.53 filed on October 3, 2003, requesting that the above-identified application be accorded a filing date of June 9, 2003, including pages 34, 42 and 44 of the specification.

The application was filed on June 9, 2003. However, on August 5, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice Of Omitted Item(s)" that stated the application had been accorded a filing date, but pages 34, 42 and 44 of the specification appear to have been omitted.

In response, on October 3, 2003, the instant petition and a copy of pages 34, 42 and 44 of the specification were submitted. The papers were accompanied by a copy of applicant's postcard receipt that acknowledges receipt of one hundred twenty-six (126) pages of application including abstract on June 9, 2003. A review of the application file indicates the presence of one hundred twenty-three (123) pages of application. It is assumed that pages 34, 42 and 44 of the specification were misplaced by the Office.

In view of the above, the petition is granted.

The $130.00 petition fee, submitted October 3, 2003, will be refunded to deposit account no. 06-0916.

This application will be returned to OIPE for further processing with a filing date of June 9, 2003, using the copy of pages 34, 42 and 44 of the specification, supplied on October 3, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Senior Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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Paper No. None

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BOSTON MA 02110

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OFFICE OF PETITIONS

In re Application of
Moungi G. Bawendi et al.
Application No. 10/456,592
Filed: June 9, 2003
Attorney Docket No. 01997-276003
Title: TELLURIUM-CONTAINING NANOCRYSTALLINE MATERIALS

DECISION ON PETITION

This is a decision on the "Petition to Accept Omitted Item(s) in a Nonprovisional Application," filed September 8, 2004, requesting that the above-identified application be accorded a filing date of June 9, 2003, with Figure 4 as part of the original disclosure of the application.

The application was deposited on June 9, 2003. However, on July 16, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Omitted Item(s) in a Nonprovisional Application – Filing Date Granted" (notice) stating that the application had been accorded a filing date, and advising applicants that it appeared as though the application was deposited without Figure 4. The notice set a two-month period for response.

On September 8, 2004, the instant petition was filed, along with Figure 4, a copy of the notice, and an amendment requesting the entry of Figure 4. The petition fee has been charged to Petitioner's Deposit Account, as authorized in the petition.

Petitioner contends that this figure was omitted on filing, but was constructively included, through incorporation by reference.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted. The specification indicates that the instant application is a divisional of application 09/625,861, and the Utility Patent Application Transmittal sheet indicates that the entire disclosure of the parent application is incorporated by reference.

Section 201.06(c) of the MPEP sets forth, in part:

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. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition (emphasis added) provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference.

For these reasons, the petition under 37 CFR §182 is **DISMISSED**.

The application will receive a filing date of June 9, 2003. However, the figure submitted with the instant petition will not be entered.

Petitioner desires for the missing figure to be included, and has properly submitted this page via an amendment. This amendment, of course, will not be entered until it has been reviewed by the examiner for new matter[1]. The amendment is not new matter if the substance was a part of the disclosure of the prior application.

The original application papers will include only those application papers present on the date of deposit.

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

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of June 9, 2003, using only the application papers filed on that date.

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.

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: Harold H. Fox
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

1 See MPEP 608.02(a).

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RICHARD KOPPEL
KOPPEL & JACOBS
SUITE 107
555 ST. CHARLES DRIVE
THOUSAND OAKS CA 91360

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JAN 2 2 2004

OFFICE OF PETITIONS

In re Application of
Christopher Michalski
Application No. 10/456,594
Filed: June 6, 2003
Attorney Docket No. A5GN2172US

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(b)

This is in response to the petition filed September 5, 2003, under 37 CFR 1.47(b).

The petition is **GRANTED**.

Petitioners have shown that a copy of the application was sent to the non-signing inventor. The inventor, however, has failed to sign and return the declaration naming him as the sole inventor. Additionally, petitioners have shown proprietary interest by providing a copy of the "Employment Agreement" between the nonsigning inventor and Analog Devices, Inc., which shows that the inventor had an obligation to assign any patent rights to Analog Devices, Inc. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and has demonstrated that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

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

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

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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CHRISTOPHER MICHALSKI
1905 LAZY LANE
HIGH POINT, NC 27265

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OFFICE OF PETITIONS

In re Application of
Christopher Michalski
Application No. 10/456,594
Filed: June 6, 2003
For: AMPLIFIER COMMON-MODE FEEDBACK SYSTEMS FOR USE WITH SWITCHED-CAPACITOR STRUCTURES

Dear Mr. Michalski:

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 703 305-4497. Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc:
RICHARD KOPPEL
KOPPEL & JACOBS
SUITE 107
555 ST. CHARLES DRIVE
THOUSAND OAKS CA 91360

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KOPPEL & JACOBS
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THOUSAND OAKS CA 91360

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OFFICE OF PETITIONS

In re Application of
Christopher Michalski
Application No. 10/456,595
Filed: June 6, 2003
Attorney Docket No. A5GN2285US

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(b)

This is in response to the petition filed September 4, 2003, under 37 CFR 1.47(b).

The petition is **GRANTED**.

The instant petition is timely filed in response to the Notice to File Missing Parts mailed August 1, 2003.

Petitioners have shown that a copy of the application was sent to the non-signing inventor. The inventor, however, has failed to sign and return the declaration naming him as the sole inventor. Additionally, petitioners have shown proprietary interest by providing a copy of the "Employment Agreement" between the nonsigning inventor and Analog Devices, Inc., which shows that the inventor had an obligation to assign any patent rights to Analog Devices, Inc. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and has demonstrated that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

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

The application file is being forwarded to Technology Center 2819 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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CHRISTOPHER MICHALSKI
1905 LAZY LANE
HIGH POINT, NC 27265

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MAY 20 2004

OFFICE OF PETITIONS

In re Application of
Christopher Michalski
Application No. 10/456,595
Filed: June 6, 2003
For: AMPLIFIER COMMON-MODE FEEDBACK SYSTEMS FOR USE WITH SWITCHED-CAPACITOR STRUCTURES

Dear Mr. Michalski:

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 703 305-4497. 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:
RICHARD KOPPEL
KOPPEL & JACOBS
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EXXONMOBIL CHEMICAL COMPANY
5200 BAYWAY DRIVE
P.O. BOX 2149
BAYTOWN, TX 77522-2149

Mail Date: 05/07/2010

Applicant	: Stanley J. Katzen	: DECISION ON REQUEST FOR
Patent Number	: 7632901	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/456,604	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **334** 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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DAVID K. LUCENTE
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LONGMONT, CO 80503

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OFFICE OF PETITIONS

In re Application of :
June Christian Ang et al :
Application No. 10/456,607 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. STL11175 :

This is a decision on the petition under 37 CFR 1.313(c), filed December 23, 2005, which is being treated 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.

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

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

This matter is being referred to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions

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

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JUL 05 2007

OFFICE OF PETITIONS

In re Application of :

BERG, Andreas et al. :
Application No. 10/456,618 : DECISION ON PETITION
Filed: June 09, 2003 : TO WITHDRAW
Attorney Docket No. **449122055700** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 18, 2007.

The request is **APPROVED**.

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

The request was signed by Deborah S. Gladstein on behalf of all attorneys of record who are associated. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **NORBET LOBIG**
IM ERLICH 79
DARMSTADT, GERMANY 13591

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

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DYKEMA GOSSETT PLLC
10 S. WACKER DR., STE. 2300
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of :
Hans Klingemann :
Application No. 10/456,620 : DECISION ON PETITION
Filed: June 6, 2003 : TO WITHDRAW
Attorney Docket No. 096937-0015 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed June 7, 2006.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Dykema Gossett, PLLC has been revoked by the applicant of the patent application on September 7, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: HANS KLINGEMANN, M.D.
1 NASSAU STREET
UNIT 1501
BOSTON, MA 02111

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/456,620	06/06/2003	Hans Klingemann	09800410-0006

CONFIRMATION NO. 1112

38939
DYKEMA GOSSETT PLLC
10 S. WACKER DR., STE. 2300
CHICAGO, IL 60606

OC000000021442203
OC000000021442203

Date Mailed: 12/01/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/07/2006.

- The Power of Attorney to you in this application has been revoked by the applicant. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

April M Wise

APRIL M WISE
OP (571) 272-1642

FORMER ATTORNEY/AGENT COPY

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Shunpei Yamazaki et al :
Application No. 10/456,633 :
Filed: June 9, 2003 :
Attorney Docket No. 0756-7164 :

This is a decision on the petition, filed October 22, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 26, 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 2823 will consider the request for continued examination under 37 CFR 1.114.

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

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

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OIPE JC182
JUL 19 2005
PATENT & TRADEMARK OFFICE

ERIC ROBIINSON
PMB 955
21010 SOUTHBANK ST.
POTOMAC FALLS VA 20165

10/27/04

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OCT 2 2 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Shunpei Yamazaki et al	:	
Application No. 10/456,633	:	
Filed: June 9, 2003	:	
Attorney Docket No. 0756-7164	:	

This is a decision on the petition, filed October 22, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 26, 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 2823 will consider the request for continued examination under 37 CFR 1.114.

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

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

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APR 16 2004

ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE WI 53202

In re Application of	:
Carl R. Marschke	:
Serial No.: 10/456,643	: PETITION TO MAKE SPECIAL
Filed: June 6, 2003	:
Attorney Docket No.: 4526-00007	:

This is in response to the petition filed on June 19, 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.

> 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.

Applicant meets the requirements of the above section.

Therefor the petition is **GRANTED**. The application will be acted on by the assigned examiner in due course.

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 to the general Office facsimile number, 703-872-9306.

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

SPE: N, Patel

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/9/07

TO SPE OF : ART UNIT 2879

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/456,658 Patent No.: 7196462

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: Change of printed drawing to original Fig 2 as shown in Request for Certification of correction is approved, since originally the original Fig 2 was meant to be published. Further sheets 1 and 2 should be replaced as requested.

SPE

2879 Art Unit 6/14/07

Copied from 10456659 on 06/11/2007

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 052007

DATE : **5/8/2007**

TO SPE OF : ART UNIT **1600 (1645)**

SUBJECT : Request for Certificate of Correction on Patent No.: **6,974,700**

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

Please complete this form and return with file ***(PFW)**, within **7** days to:
Certificates of Correction Branch – 2900 South Tower ste.9A43A
Palm location **7580** or forward ***(IFW)** to scanning using document code **COCX**.

***Ok to enter changes to claim 1, 2nd request, as requested in C of C?**

Ernest C. White, LIE (703) 308-9390x122
Certificates of Correction Branch

Thank You For Your Assistance

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

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

Comments:

The limitation 'has the amino acid sequence of' in the last two lines of claim 1 was based on what Applicant agreed to during the interviews of 12/30/04 and 01/04/05. See paragraph 2 on page 2 of the Examiners' amendment dated 03/25/05. The currently requested language to claim 1 changes the scope of the claim.

SPE

1645
Art Unit

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Date : 5/24/2007
Patent No. : 6,974,700 B2
Inventor(s) : Martin Levine
Issue Date : April 24, 2007
Title : **KIT FOR USE IN PREDICTING REFRACTORY PERIODONTAL DISEASE DATA CHANNEL**
Doc./File No. : 5864.028

Re: Certificate of Correction

Consideration has been given your request for a certificate of correction, for the above-identified patent under the provisions of Rule 1.322 and 1.323.

Respecting the alleged error(s) your request, your request to correct the alleged error in claim 1 has been denied by the SPE on PTOL-306 SPE response form, it states that, "The limitation 'hasthe amino acid sequence of' in the last two lines of claim 1 was based on what Applicant agreed to during the interviews of 12/30/04 and 01/04/05. See paragragh 2 on page 2 of the Examiners' amendment dated 03/25/05. The currently requested language to claim 1 changes the scope of the claim. Therefore, no correction is in order here.

Further consideration will be given concerning this matter upon receipt of a request for **Reconsideration** (reconsideration should be accompanied by supporting document(s) such as, amendment, postcard receipt, 1449/892, etc.) and should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (703) 308-9390 ext.#122
Cecelia B. Newman, *Supervisor* (703) 308-9390 ext. #101
Decisions & Certificates of Correction Branch

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

ecw

SPE: J. Gandhi

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/5/07

TO SPE OF : ART UNIT 2835

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/456,671 Patent No.: 7079390

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: It's OK Lamont Datskovsky

MICHAEL DATSKOVSKIY
PRIMARY EXAMINER

JAYPRAKASH GANDHI
SUPERVISORY PATENT EXAMINER

SPE 2835 Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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MERCHANT & GOULD PC
P O BOX 2903
MINNEAPOLIS, MN 55402-0903

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JUL 1 6 2004

OFFICE OF PETITIONS

In re Application of :
Kazuhiro Matsuo :
Application No. 10/456,701 : DECISION GRANTING PETITION
Filed: June 6, 2003 : UNDER 37 CFR 313(c)(2)
Attorney Docket No. 10873.1012USW1 :

This is a decision on the petition, filed June 28, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 2, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2879 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

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Commissioner for Patents
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Paper No.

TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON, MA 02110

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OFFICE OF PETITIONS

In re Application of :
Langdo et al. :
Application No. 10/456,708 : DECISION ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. ASC-008B :

This is a decision on the PETITION FOR CHANGE TO ORDER OF INVENTOR NAMES UNDER 37 C.F.R. § 1.182, filed October 22, 2004.

The petition is **GRANTED.**

The order of the names of the inventors has been changed as follows:

1. Thomas A. Langdo
2. Matthew Currie
3. Glyn Braithewaite
4. Richard Hammond
5. Anthony Lochtefeld
6. Eugene Fitzgerald

Receipt of the petition fee is acknowledged.

Please find enclosed a corrected filing receipt.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

7+

Paper No.: _____

DATE : December 21, 2006

TO SPE OF : ART UNIT 1712

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/456710 Patent No.: 7,119,159 B2

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

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

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

Elisha Evans
Certificates of Correction Branch

703-308-9390 ext. *110*

Thank You For Your Assistance

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

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

Comments: _____

M Moore

Randy Gulakowski
RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1712
Art Unit

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WILLIAM BAK
SPRING HOUSE CORP. CENTER
BOX 457
SPRING HOUSE, PA 19477

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DEC 0 6 2004

OFFICE OF PETITIONS

In re Application of :
Philip James Murray :
Application No. 10/456,719 : NOTICE
Filed: June 6, 2003 :
Attorney Docket No. SUC3USA

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
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Blakely, Sokoloff, Taylor & Zafman
12400 Wilshire Blvd., 17th Floor
Los Angeles, CA 90025

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JUL 20 2006

OFFICE OF PETITIONS

In re Application of
Singam Sunder
Application No. 10/456,736
Filed: June 5, 2003
Attorney Docket No. 4663P015

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 October 21, 2004.

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

A review of the file record indicates that the power of attorney to Jordan M. Becker has been revoked by the assignee of the patent application on November 30, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

David Bucci
Petitions Examiner
Office of Petitions

cc: Schwegman, Lundberg, Woessner & Klutch
99 Almaden Blvd., Suite 520
San Jose, CA 95113

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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Nixon Peabody LLP-Brocade
200 Page Mill Road
Suite 200
Palo Alto, CA 94306

Mail Date: 04/21/2010

Applicant	: Rajiv Ramanathan	: DECISION ON REQUEST FOR
Patent Number	: 7627654	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/456,756	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1096** 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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United States Patent and Trademark Office
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WOLF GREENFIELD (Microsoft Corporation)
C/O WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

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FEB 0 2 2009

OFFICE OF PETITIONS

In re Application of

Swander, et al.

Application No. 10/456,766

Filed: June 6, 2003

Attorney Docket No. 221038

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed January 12, 2009.

The petition is **granted**.

This application was held abandoned October 9, 2008, after no reply was received to the Notice of Allowance and Issue Fee Due mailed July 9, 2008. The notice set forth a statutory period of reply of three months from its mailing date. No response was received within the allowable period and the application became abandoned on October 9, 2008. A Notice of Abandonment was mailed November 3, 2008. The instant petition was filed on January 12, 2009. Petitioner maintains that the notice was never received because the USPTO did not timely enter a request to change the power of attorney and correspondence address.

A review of the application file history reveals that a request to change the power of attorney and correspondence address was filed on May 29, 2007, but not entered. The Notice of Allowance and Issue Fee Due was sent to an incorrect address, accordingly. The petition is granted.

The Power of Attorney and Request to Change Correspondence Address has been corrected in the USPTO records.

The issue fee and publication fee were received on January 12, 2009.

The application file is being forwarded to the Office of Data Management for further processing that will include withdrawal of the holding of abandonment.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BULEVARD, SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

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SEP 29 2006

OFFICE OF PETITIONS

In re Application of :
Nils Endric Schubert et al :
Application No. 10/456,768 : DECISION ON PETITIONS
Filed: June 6, 2003 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 2986P044 :

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed August 18, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 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).

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The

relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable. In this regard, the present application fails to state whether it is a continuation, division, or continuation-in-part of prior-filed Application No. 09/724,840.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition, along with an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters, is required.

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

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

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

Frances Hicks
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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12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

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JAN 18 2007

OFFICE OF PETITIONS

In re Application of
Nils Endric Schubert et al
Application No. 10/456,768
Filed: June 6, 2003
Attorney Docket No. 2986P044

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND (a)(6)

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

The petitions are **GRANTED.**

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

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

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

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

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

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

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

This application is being forwarded to Technology Center Art Unit 2825 for consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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
10/456,768	06/06/2003	2825	2730	2986P044	48	1	1

CONFIRMATION NO. 6664

CORRECTED FILING RECEIPT

OC000000022029609

8791
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

Date Mailed: 01/17/2007

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

Applicant(s)

Nils Endric Schubert, Neu-Ulm, GERMANY;
Kenneth S. McElvain, Los Altos, CA;
John Mark Beardslee, Menlo Park, CA;
Mario Larouche, Hillsboro, OR;

Assignment For Published Patent Application

Synplicity, Inc.

Power of Attorney:

Stanley Sokoloff--25128
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Eric Hyman--30139
James Scheller Jr--31195
Lester Vincent--31460
George Hoover II--32992
Gordon Lindeen III--33192
James Salter--35668

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/387,261 06/07/2002
and is a CIP of 09/724,840 11/28/2000 PAT 6,618,839
which claims benefit of 60/168,266 11/30/1999
and claims benefit of 60/230,068 08/31/2000

Foreign Applications

If Required, Foreign Filing License Granted: 08/05/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/456,768

Projected Publication Date: Request for Non-Publication Acknowledged

Non-Publication Request: Yes

Early Publication Request: No

Title

Hardware/software co-debugging in a hardware description language

Preliminary Class

716

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

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

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

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

NOT GRANTED

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

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ALEXANDRIA, VA 22313-1450
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AUG - 6 2003

Paper NO. 3

In re Application of	:	
Joseph A. Depuydt	:	
Serial Number: 10/456,769	:	DECISION ON
Filed: June 6, 2003	:	PETITION UNDER
For: BRUSH HEAD FOR TOOTHBRUSH	:	M.P.E.P. 708.02, II

This is in response to the petition filed, June 6, 2003, requesting that the above-identified application be granted Special Status under Section 708.02, II of the M.P.E.P. and 37 CFR 1.102(d) (fee paid).

The petition has been considered and found to comply with the requirements set forth under the above-noted section. Accordingly, the petition is **GRANTED.**

JMStone

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

Patent Department
The Gillette Company
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Boston, MA 02109

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Rosati, P.C.
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Palo Alto CA 94304

MAILED

JUN 29 2009

OFFICE OF PETITIONS

In re Patent No. 7,393,697	:	ON PETITIONS
David Charlton	:	Under 37 CFR 1.183
Issue Date: July 1, 2008	:	AND
Application No. 10/456,771	:	REQUEST FOR RECONSIDERATION
Filed: June 6, 2003	:	OF PATENT TERM ADJUSTMENT
Attorney Docket No. 32209-701.201	:	
	:	

This is a decision on the 1) Petition under 37 C.F.R. 1.183, requesting that the Office waive the rules and consider on the merits a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) filed more than two months from the date the above-referenced patent issued; and on the 2) Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d), all of which were filed on November 14, 2008.

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

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

BACKGROUND

On July 1, 2008, the above-identified application matured into U.S. Patent No. 7,393,697, with a revised patent term adjustment

of 624 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. Patentee now petitions under 37 C.F.R. § 1.183 to (i) suspend or waive the requirement of 37 C.F.R. § 1.705(d) that a Request for Reconsideration of Patent Term Adjustment be filed within two months of the date the patent issued; and (ii) consider the enclosed Request for Reconsideration of Patent Term Adjustment. Patentee makes this request, in view of the recent decision in *Wyeth v. Dudas*, No. 07-1492 (D.D.C. Sept. 30, 2008).

ON PETITION UNDER 37 CFR 1.183
TO WAIVE THE TWO-MONTH REQUIREMENT OF 37 CFR 1.705(d)

The above-referenced patent issued on July 1, 2008. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until November 14, 2008. Petitioner requests that the Office waive the rules and consider on the merits the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) even though it was untimely filed more than two months from the date the patent issued.

The relevant regulation, 37 CFR 1.705(d), provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, *any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued* and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*emphasis* added).

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by September 1, 2008, the date two months from the date this patent issued, July

1, 2008. Rather, on November 14, 2008, nearly ~~two~~ one and 1/2 month after the issuance of a decision in Wyeth v. Dudas on September 30, 2008, petitioner filed the instant request for waiver of the two-month requirement.

37 CFR 1.183 provides that:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

Preliminarily, it is recognized that the two-month requirement of 37 CFR 1.705(d) is a requirement of the regulations and not a statutory requirement. The statute, 35 U.S.C. 154, requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director. But, the statute allows the Director to establish the procedures for requesting such reconsideration. Those procedures[1] include pursuant to 37 CFR 1.705(d) setting a two-month period for filing a request for reconsideration of the revised patent term adjustment indicated in the patent. As

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[1] 35 U.S.C. § 154(b)(3) provides that the USPTO shall: (1) prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. § 154(b); (2) make a determination of any patent term adjustment under 35 U.S.C. § 154(b) and transmit a notice of that determination with the notice of allowance under 35 U.S.C. § 151; and (3) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination. Pursuant to the mandate and authority in 35 U.S.C. § 154(b)(3), the USPTO promulgated 37 C.F.R. § 1.705, which provides that: (1) the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. § 154(b)(37 C.F.R. § 1.705(a)); (2) any request for reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in 37 C.F.R. § 1.705(d)) must be by way of an application for patent term adjustment filed no later than the payment of the issue fee and accompanied by (inter alia) the fee set forth in 37 C.F.R. § 1.18(e)(37 C.F.R. § 1.705(b)); and (3) if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued.

such, it is within the Director's authority to waive the two-month requirement.

Having considered petitioner's arguments, it is concluded that waiver of the two-month requirement is not warranted. The primary basis for requesting waiver set forth by petitioner is the ruling made by the court in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008). Specifically, petitioner states that in Wyeth, the U.S. District Court for the District of Columbia held that contrary to USPTO practice, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 CFR 1.702(b) in addition to any examination delay under 37 CFR 1.702(a), to the extent that the two periods of delay "do not occur on the same calendar day or days." Petitioner has failed to present any arguments that they could not have filed a Request for Reconsideration of Patent Term Adjustment within two months of the date the above-referenced patent issued because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision.

First, of all, the issuance of the Wyeth Opinion is not an extraordinary situation. Wyeth followed the procedure set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination. Then, pursuant to 35 U.S.C. 154(b)(4)(A)[2], Wyeth timely filed a complaint in District Court seeking judicial review of the Office's decision. A Memorandum Opinion and Order, the Wyeth decision of September 30, 2008, directed to the parties involved was issued.

The fact that any relief ultimately granted in Wyeth would benefit patentee had they timely filed a request for reconsideration does not make the situation extraordinary. Petitioner chose not to challenge their revised patent term adjustment within the two-month period. Petitioner could have filed a Request for Reconsideration of Patent Term Adjustment as Wyeth did. It is acknowledged that petitioner may have chosen

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[2] 35 U.S.C. 154(b)(4)(A) APPEAL OF PATENT TERM ADJUSTMENT DETERMINATION. – (A) An applicant dissatisfied with a determination made by the Director under paragraph (3) shall have remedy by a civil action against the Director filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent. Chapter 7 of title 5 shall apply to such action. Any final judgment resulting in a change to the period of adjustment of the patent term shall be served on the Director, and the Director shall thereafter alter the term of the patent to reflect such change.

not to file a request for reconsideration based on a conclusion that the Office's interpretation of 35 U.S.C. § 154(b)(2)(A) was correct. Nonetheless, the fact that the District Court has now issued an Opinion contrary to the Office's interpretation does not make the situation extraordinary. This is not unlike any other situation where a patentee (or applicant) challenges a final agency decision and the decision upon judicial review could have had applicability to another patentee (or applicant) had they taken such action. In fact, many patentees may be in the same situation as petitioner with respect to the Wyeth decision.

Petitioner simply fails to articulate how their failure to file a request for reconsideration of patent term adjustment within two months of the issue date of the patent was due to an extraordinary situation. Petitioner cannot rely on Wyeth's actions or the Wyeth decision to establish that their situation was extraordinary.

Moreover, justice does not require waiver of the two-month requirement. Justice requires that the Office continue to devote its resources to the adjudication of timely filed requests for reconsideration under 37 CFR 1.705(b) and (d). Further, upon ultimate resolution of the interpretation of 37 CFR 1.702, justice requires that the Office determine consistent with relevant law and practice, and appropriate Court or legislative guidance, the applicability of any changes as to all affected patentees who failed to timely seek administrative remedy, and thus, could not seek judicial review.

In view thereof, the petition under 37 CFR 1.183 for waiver of the two-month requirement of 37 CFR 1.705(d) is **dismissed**.

Accordingly, consideration now turns to the Request for Reconsideration of Patent Term Adjustment under 37 CFR 1.705(d).

ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)," filed November 14, 2008. Therein, patentee requests correction of the patent

term adjustment (PTA) indicated in the patent to six hundred twenty-four 624) days.

On July 1, 2008, the above-identified application matured into U.S. Patent No. 7,393,697 with a revised patent term adjustment of 624 days. The instant request for reconsideration was filed over four months after the issuance of the patent, on July 1, 2008.

No error in the printing of the patent has been shown. The patent term adjustment indicated on the patent reflects the Office's determination of patent term adjustment shown in the PAIR system for this application. 37 CFR 1.705(d) provides the sole avenue before the Office for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, § 1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Since the request was not filed within two months of the issue date of the patent, the request is properly **dismissed as untimely filed**.

CONCLUSION

It is determined that waiver of the requirement pursuant to 37 CFR 1.183 is not warranted. Accordingly, the request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) filed more than two months after the issue date of the patent is dismissed as untimely filed.

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

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

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DYKEMA GOSSETT PLLC
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CHICAGO, IL 60606

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MAY 01 2007

OFFICE OF PETITIONS

In re Application of :
Hans Klingemann :
Application No. 10/456,779 : DECISION ON PETITION
Filed: June 6, 2003 : TO WITHDRAW
Attorney Docket No. 09800410-0004 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 7, 2006.

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

A review of the file record indicates that the power of attorney to Dykema Gossett PLLC has been revoked by the applicant of the patent application on September 7, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Cohen & Grigsby, P.C.**
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

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

MAILED

JUN 28 2010

OFFICE OF PETITIONS

In re Application of Salonen :
Application No. 10/456,786 : On Application For
Filing Date: June 9, 2003 : Patent Term Adjustment
Attorney Docket No. 39700-595001US :

This is in response to the "Request for Reconsideration of Patent Term Adjustment" filed February 17, 2010. Applicant states the correct patent term adjustment to be indicated on the patent is at least one thousand one hundred eighty-four (1,184) days, not nine hundred seventeen (917) 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.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent,

the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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Paper No. 4

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DEC 17 2003

OFFICE OF PETITIONS

In re Application of	:	
Glossner et al.	:	
Application No. 10/456,793	:	
Filed: June 7, 2003	:	
Title of Invention: DIGITAL	:	
SIGNAL PROCESSOR WITH	:	DECISION GRANTING
WITH CASCADED SIMD	:	STATUS UNDER
ORGANIZATION	:	37 CFR 1.47(a)

This Decision is in response to a Petition Under 37 C.F.R. 1.47(a), filed November 17, 2003, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **granted**.

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

Petitioner has shown that the non-signing inventors, Clair John Glossner, III, Erdem Hokenek and Mayan Moudgill, refuse to join in the application.

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

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

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

Derek L. Woods
Petitions Attorney
Office of Petitions

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Clair John Glossner, III
26 Benedict Place
Carmel, NY 10512

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DEC 17 2003

OFFICE OF PETITIONS

In re Application of	:	
Glossner et al.	:	
Application No. 10/456,793	:	
Filed: June 7, 2003	:	
Title of Invention: DIGITAL	:	
SIGNAL PROCESSOR WITH	:	LETTER
WITH CASCADED SIMD	:	
ORGANIZATION	:	

Dear Dr. Glossner:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0014. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Derek L. Woods
Petitions Attorney
Office of Petitions

cc: FRANK CHAU, ESQ.
F. CHAU & ASSOCIATES, LLP
1900 HEMPSTEAD TURNPIKE
EAST MEADOW, NY 11554

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

Mayan Moudgill
143 Juniper Road
White Plains, NY 10607

COPY MAILED

DEC 17 2003

OFFICE OF PETITIONS

In re Application of :
Glossner et al. :
Application No. 10/456,793 :
Filed: June 7, 2003 :
Title of Invention: DIGITAL :
SIGNAL PROCESSOR WITH : LETTER
WITH CASCADED SIMD :
ORGANIZATION :

Dear Dr. Moudgill:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0014. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Derek L. Woods
Petitions Attorney
Office of Petitions

cc: FRANK CHAU, ESQ.
F. CHAU & ASSOCIATES, LLP
1900 HEMPSTEAD TURNPIKE
EAST MEADOW, NY 11554

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Erdham Hokenek
3426 Fairview Court
Yorktown Heights, NY 10598

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DEC 17 2003

OFFICE OF PETITIONS

In re Application of :
Glossner et al. :
Application No. 10/456,793 :
Filed: June 7, 2003 :
Title of Invention: DIGITAL :
SIGNAL PROCESSOR WITH : LETTER
WITH CASCADED SIMD :
ORGANIZATION :

Dear Dr. Hokenek:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0014. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Derek L. Woods
Petitions Attorney
Office of Petitions

cc: FRANK CHAU, ESQ.
F. CHAU & ASSOCIATES, LLP
1900 HEMPSTEAD TURNPIKE
EAST MEADOW, NY 11554

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/456,810	06/05/2003	Robert A. Asmus	58771US002	7827

32692 7590 11/15/2004

3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

EXAMINER	
PAGE, THURMAN K	

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 11/15/2004

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

UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
Alexandria, VA. 22313-1450
WWW.USPTO.GOV

Paper No.

Nancy M. Lambert
Ofice of Intellectual Property Company
3M Inovation Properties Company
P.O. Box 33427
ST. Paul, Minnesota 55133-3427

Date: November 4, 2004
Application No. 10/456,810
Filed: June 5, 2003
Subject: **HYDROPHILIC ADHESIVES FOR DELIVERY OF HERBAL MEDICINES**

ON PETITION
37 CFR 1.48

Receipt is acknowledged of the petition filed May 10, 2004, under 37 CFR 1.48(C)(5) for correction of inventorship. The petition has been **GRANTED**.

In view of the papers filed, it has been found that this non-provisional application, as filed, through error and without deceptive intent, improperly set forth the Inventorship, and accordingly, this application has been changed by the **addition of LING LU**. The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

THURMAN K. PAGE, M.A., J.D.
SUPERVISORY PATENT EXAMINER

THURMAN K. PAGE
United States Patent and Trademark Office
Technology Center 1600
SPE, ART UNIT 1615
Remsen 4A81
571-272-0602

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Tarolli, Sundheim, Covell & Tummino L.L.P.
Cisco Systems, Inc.
1300 East Ninth Street
Suite 1700
Cleveland, OH 44114

Mail Date: 04/21/2010

Applicant	: Walid Kamali	: DECISION ON REQUEST FOR
Patent Number	: 7599629	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/456,817	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/06/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1019** 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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KLARQUIST SPARKMAN, LLP
121 S.W. SALMON STREET
SUITE #1600
PORTLAND OR 97204-2988

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AUG 25 2009

OFFICE OF PETITIONS

In re Application of :
Horikawa, et al. :
Application No. 10/456,830 : ON APPLICATION FOR
Filed: June 5, 2003 : PATENT TERM ADJUSTMENT
Atty Docket No.4239-63008-01 :

This is in response to the "PETITION FOR PATENT TERM ADJUSTMENT INCLUDING RECONSIEDRATION UNDER 37 CFR § 1.705(b)" filed June 30, 2009. Applicants request that the determination of patent term adjustment be corrected from five hundred ninety-two (592) days to a minimum of one thousand seven hundred and sixteen (1,716) days. Applicants request this correction, in part, on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

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

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

actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

To the extent that applicants otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the

---

[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.

notice of allowance, the application for patent term adjustment is **dismissed**.

Applicant asserts that applicant should not be assessed a delay of 3 days pursuant to 37 CFR 1.704(b). Specifically, applicants state that:

> [t]he Office calculated Applicants' delay to be 3 days due to submission of the Response after Non-Final Action filed January 22, 2008, in reply to the Non-Final Rejection mailed October 19, 2007. (see Exhibit A). However, as January 19, 2008 (the end of the 3-month period for reply) fell on a Saturday, and Monday, January 21, 2008, was a federal holiday. Applicants reply was timely filed on Tuesday, January 22, 2008 and does not constitute a delay on the part of the Applicants. Therefore, Applicants' delay is 0 days.

The application history has been reviewed and it has been determined that the period of reduction of 3 days is warranted.

Pursuant to 37 CFR 1.704(b), the period of adjustment of the term of the patent should be reduced by 3 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the non-final Office action, January 20, 2008, and ending on the date the reply was filed, January 22, 2008. The calculation of 3 days of applicant delay is based on the date of receipt of the response to the non-final Office action. The Office notes that 35 U.S.C. 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) does not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii). Accordingly, the period of reduction of 3 days is merited and will remain.

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 Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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KLARQUIST SPARKMAN, LLP
121 S.W. SALMON STREET
SUITE #1600
PORTLAND, OR 97204-2988

Mail Date: 04/20/2010

Applicant	: Izumi Horikawa	: DECISION ON REQUEST FOR
Patent Number	: 7598077	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/456,830	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/05/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2406** 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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KLARQUIST SPARKMAN, LLP
121 S.W. SALMON STREET
SUITE #1600
PORTLAND OR 97204-2988

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APR 16 2010

OFFICE OF PETITIONS

In re Patent No. 7,598,077 : DECISION ON REQUEST
Horikawa, et al. : FOR
Issue Date: October 6, 2009 : RECONSIDERATION OF
Application No. 10/456,830 : PATENT TERM ADJUSTMENT
Filed: June 5, 2003 : and
Atty Docket No. 4239-63008-01 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 3, 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, eight hundred and eleven (1,811) 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, eight hundred and eleven (1,811) days is **GRANTED**.

Deposit account 02-4550 will be charged $200.00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, eight hundred and eleven (1,811) days.**

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,598,077 B2

DATED : Oct. 6, 2009

INVENTOR(S) : Horikawa 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 (1216) days

Delete the phrase "by 1216 days" and insert – by 1811 days--

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ROBERT DEBERARDINE
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK, IL 60064-6008

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MAR 2 2 2007

OFFICE OF PETITIONS

In re Application of :
Fortuna Haviv, et al. :
Application No. 10/456,831 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 6942.US.02 :

This is a decision in response to the petition, filed September 21, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to an Office action mailed March 13, 2006. This decision precedes the mailing of a Notice of Abandonment. On September 21, 2006, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions 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) the requisite statement of unintentional delay.

The application is being referred to Technology Center AU 1652 for consideration of the amendment filed September 21, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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PAUL D. YASGER
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK, IL 60064-6008

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JUN 19 2008

OFFICE OF PETITIONS

In re Application of
Fortuna Haviv, et al.
Application No. 10/456,831
Filed: June 6, 2003
Attorney Docket No. 6942.US.02

ON PETITION

This is a decision in response to the petition, filed February 18, 2008, 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 a final Office action mailed April 11, 2007. This decision precedes the mailing of a Notice of Abandonment. On February 18, 2008, 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 and terminal disclaimer with fee, (2) the petition fee of $1,540, and (3) an adequate statement of unintentional delay.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Since, no extension of time fees are due on a petition for revival, the $1,050 extension fees are being credited to counsel's deposit account.

This application is being referred to Technology Center AU 1652 for appropriate action by the Examiner in the normal course of business on the reply received February 18, 2008.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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AUG 2 1 2006

OFFICE OF PETITIONS

In re Application of :
Liu, et al. :
Application No. 10/456,855 : DECISION ON PETITION
Filed: April 10, 2002 : TO WITHDRAW
Attorney Docket No. 020683-000221US : 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 2, 2006.

The request is **APPROVED**.

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

The request was signed by Stephen Y. Pang on behalf of all attorneys of record who are associated with customer No. 20350.

All attorneys/agents associated with the Customer Number 20350 have been withdrawn.

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

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

There is an outstanding Office action mailed April 18, 2006 that requires a reply from the applicant.

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: WANQIAN D. LIU
34516 ALBERTA TERRACE
FREMONT, CA 94555

cc: BRIAN SATTIZAHN
McNEES, WALLACE AND NURICK, LLC
100 PINE STREET
PO BOX 1166
HARRISBURG, PA 17108

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/456,855	04/10/2002	Wanqian D. Liu	020683-000221US

CONFIRMATION NO. 4894

OC000000020080475
OC000000020080475

20350
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Date Mailed: 08/17/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/02/2006.

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

APRIL M WISE
OP (571) 272-1642

FORMER ATTORNEY/AGENT COPY

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JUL 14 2005

PRESTON GATES & ELLIS LLP
1900 MAIN STREET, SUITE 600
IRVINE CA 92614-7319

In re Application of
David I. Cohen et al
Serial No.: 10/456,865
Filed: June 8, 2003
Attorney Docket No.: 51311-00002

: PETITION TO MAKE SPECIAL

This is in response to the petition filed June 15, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(d).

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

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission to the Office general facsimile number, 571-273-8300.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

JUL 14 2009

OFFICE OF PETITIONS

In re Application of :
Valerie Masini-Eteve et al. :
Application No. 10/456,868 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 08356-0102 :

This is a decision on the petition to expunge assignment records, filed May 16, 2007, that is being treated under the provisions set forth in MPEP § 323.01(d).

The petition to expunge is **DISMISSED**.

As set forth in MPEP § 323.01(d), a petition to expunge assignment records information can be granted **only** if the petitioner can **prove** (emphases added) that:

(A) the normal corrective procedures outlined in MPEP § 323.01(a) through § 323.01(c) will not provide the petitioner with adequate relief; and
(B) the integrity of the assignment records will not be affected by granting the petition.

The instant petition fails to satisfy both the requirements set forth under (A) and (B) above, and is therefore DISMISSED. Petitioner should note that, in regard to requirement (A), through the recordation of the assignment on May 16, 2007, applicants have been provided relief under the procedure outlined in § 323.01(b); and as for requirement (B), Office policy regarding recordation of assignment documents is directed toward maintaining a complete history of claimed interests in property and, therefore, recorded assignment documents will not be expunged even if subsequently found to be invalid. See In re Ratny, 24 USPQ2d 1713 (Comm'r Pat. 1992). Once a document is recorded with the Assignment Services Division, the Assignment Services Division will not remove the papers from the record relating to that application or patent. See MPEP § 323.01(d).

Petitioners contend "[i]ndeed, the application already was assigned to Besins International Belgique by way of the Assignment submitted in parent application 10/099,725 and recorded at Reel/Frame 012935/0698. By its terms, the Assignment of 10/099,725 includes "all divisions, continuations, reissues, continuations-in-part and extensions." However, the instant application is a continuation-in-part of the '725 application and a prior assignment of the original application is not applied to the substitute or continuation-in-part application because the assignment recorded against the original application gives the assignee rights to only the subject matter common to both applications. See MPEP § 306.

A petition to expunge requires a processing fee set forth in 37 CFR 1.17(g), which is currently $200. As the applicants originally submitted $130, the balance of $70 has been charged to the Deposit Account 19-0741, 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 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 Ramesh Krishnamurthy at (571) 272-4914.

David Bucel
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No.

Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

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MAR 17 2008

OFFICE OF PETITIONS

In re Application of :
John Shigeto Minami, Robin Yasu :
Uyeshiro, Michael Ward Johnson, :
Steve Su, Michael John :
Sebastian Smith, Addison :
Kwuanming Chen, Mihir :
Shaileshbhai Doctor, and Daniel :
Leo Greenfield :
Application No. 10/456,871 : DECISION ON PETITION
Filed: June 5, 2003 : PURSUANT TO 37 C.F.R.
Attorney Docket Number: : § 1.47(A)
NVIDP333/P001318 :
Title: GIGABIT ETHERNET ADAPTER :
SUPPORTING THE ISCSI AND IPSEC :
PROTOCOLS :

This is in response to the petition pursuant to 37 C.F.R. § 1.47(a)[1], filed January 3, 2008.

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1 A grantable petition under 37 C.F.R. § 1.47(a) requires:
(1) the petition fee of $200;
(2) a surcharge of either $65 or $130, if the petition is not filed at the time of filing the application, as set forth in 37 C.F.R. § 1.16(f);
(3) a statement of the last known address of the non-signing inventors;
(4) proof that either:
a) a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application, or
b) the non-signing inventor cannot be found or reached

This petition pursuant to Rule § 1.47(a) is **GRANTED**.

On June 5, 2003, the application was filed, identifying John Shigeto Minami, Robin Yasu Uyeshiro, Michael Ward Johnson, Steve Su, Michael John Sebastian Smith, Addison Kwuanming Chen, Mihir Shaileshbhai Doctor, and Daniel Leo Greenfield as joint inventors. The application was deposited with an executed declaration. On October 3, 2007, a non-final Office action was mailed, which indicated, *inter alia*, that the declaration that was provided on filing was defective and that a new declaration would be required. This Office action set a three-month period for reply.

37 C.F.R. § 1.47(a)(4) requires proof that a complete copy of the application was sent to each of the non-signing inventors. Petitioner has set forth that "the application" was sent to each of the non-signing inventors. The Office is construing this language to mean that *a complete copy* of Application No. 10/456,871 was sent to each non-signing inventor. Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.

This application is hereby accorded Rule § 1.47(a) status.

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

The Revocation of Prior Powers of Attorney and Grant of New Power of Attorney has been entered and made of record. Petitioner will note that the address on both the petition and the Revocation of Prior Powers of Attorney and Grant of New Power of Attorney does not match the address that is associated with the customer number that was placed on the latter. The address that is associated with the customer number has been entered as the address of record.

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 present application can receive further processing in due course.

---

after diligent effort, and a statement that these efforts were not successful, and;

(5) a declaration which complies with 37 C.F.R. § 1.63.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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John Shigeto Minami
1212 Nuuanu Avenue #1206
Honolulu, HI 96817

In re Application of :
John Shigeto Minami, Robin Yasu :
Uyeshiro, Michael Ward Johnson, :
Steve Su, Michael John :
Sebastian Smith, Addison :
Kwuanming Chen, Mihir :
Shaileshbhai Doctor, and Daniel :
Leo Greenfield :
Application No. 10/456,871 :
Filed: June 5, 2003 :
Attorney Docket Number: :
NVIDP333/P001318 :
Title: GIGABIT ETHERNET ADAPTER :
SUPPORTING THE ISCSI AND IPSEC :
PROTOCOLS :

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MAR 17 2008

OFFICE OF PETITIONS

LETTER

Dear Mr. Minami:

You are named 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 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 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, the attorney of record 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 (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

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ALEXANDRIA, VA 22313-1450
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Daniel Leo Greenfield
University of Cambridge, Computer Laboratory
William Gates Building, 15 JJ Thomson Avenue
Cambridge CB3 0FD
UNITED KINGDOM

In re Application of :
John Shigeto Minami, Robin Yasu :
Uyeshiro, Michael Ward Johnson, :
Steve Su, Michael John :
Sebastian Smith, Addison :
Kwuanming Chen, Mihir :
Shaileshbhai Doctor, and Daniel :
Leo Greenfield :
Application No. 10/456,871 :
Filed: June 5, 2003 :
Attorney Docket Number: :
NVIDP333/P001318 :
Title: GIGABIT ETHERNET ADAPTER :
SUPPORTING THE ISCSI AND IPSEC :
PROTOCOLS :

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MAR 17 2008

OFFICE OF PETITIONS

LETTER

Dear Mr. Greenfield:

You are named 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 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 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, the attorney of record 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 (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Mihir Shaileshbhai Doctor
2231 Ala Wai Boulevard #202
Honolulu, HI 96815

In re Application of	:	
John Shigeto Minami, Robin Yasu	:	COPY MAILED
Uyeshiro, Michael Ward Johnson,	:	
Steve Su, Michael John	:	MAR 17 2008
Sebastian Smith, Addison	:	
Kwuanming Chen, Mihir	:	OFFICE OF PETITIONS
Shaileshbhai Doctor, and Daniel	:	
Leo Greenfield	:	
Application No. 10/456,871	:	LETTER
Filed: June 5, 2003	:	
Attorney Docket Number:	:	
NVIDP333/P001318	:	
Title: GIGABIT ETHERNET ADAPTER	:	
SUPPORTING THE ISCSI AND IPSEC	:	
PROTOCOLS	:	

Dear Mr. Doctor:

You are named 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 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 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, the attorney of record 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 (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

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Addison Kwuanming Chen
2121 Algaroba Street
Honolulu, HI 96826

In re Application of :
John Shigeto Minami, Robin Yasu :
Uyeshiro, Michael Ward Johnson, :
Steve Su, Michael John :
Sebastian Smith, Addison :
Kwuanming Chen, Mihir :
Shaileshbhai Doctor, and Daniel :
Leo Greenfield :
Application No. 10/456,871 :
Filed: June 5, 2003 :
Attorney Docket Number: :
NVIDP333/P001318 :
Title: GIGABIT ETHERNET ADAPTER :
SUPPORTING THE ISCSI AND IPSEC :
PROTOCOLS :

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MAR 17 2008

OFFICE OF PETITIONS

LETTER

Dear Mr. Chen:

You are named 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 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 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, the attorney of record 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 (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Zilka-Kotab,. PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

UNITED STATES PATENT AND TRADEMARK OFFICE

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Steve Su
3420 Oahu Avenue
Honolulu, HI 96822

In re Application of :
John Shigeto Minami, Robin Yasu :
Uyeshiro, Michael Ward Johnson, :
Steve Su, Michael John :
Sebastian Smith, Addison :
Kwuanming Chen, Mihir :
Shaileshbhai Doctor, and Daniel :
Leo Greenfield :
Application No. 10/456,871 :
Filed: June 5, 2003 :
Attorney Docket Number: :
NVIDP333/P001318 :
Title: GIGABIT ETHERNET ADAPTER :
SUPPORTING THE ISCSI AND IPSEC :
PROTOCOLS :

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MAR 17 2008

OFFICE OF PETITIONS

LETTER

Dear Mr. Su:

You are named 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 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 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, the attorney of record 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 (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

UNITED STATES PATENT AND TRADEMARK OFFICE

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Robin Yasu Uyeshiro
1234 Kelewina Street
Kailua, HI 96734

In re Application of :
John Shigeto Minami, Robin Yasu :
Uyeshiro, Michael Ward Johnson, :
Steve Su, Michael John :
Sebastian Smith, Addison :
Kwuanming Chen, Mihir :
Shaileshbhai Doctor, and Daniel :
Leo Greenfield :
Application No. 10/456,871 :
Filed: June 5, 2003 :
Attorney Docket Number: :
NVIDP333/P001318 :
Title: GIGABIT ETHERNET ADAPTER :
SUPPORTING THE ISCSI AND IPSEC :
PROTOCOLS :

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MAR 17 2008

OFFICE OF PETITIONS

LETTER

Dear Ms. Uyeshiro:

You are named 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 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 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, the attorney of record 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 (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 28, 2006

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/456892 patent No.: ~~7,003,163~~ 7,084,168

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: The correction to col. 1, line 8 will not be entered because 6,608,608 is not the correct patent number. Note that 6,608,608 is entitled "Vehicular Head Up Display". The correct patent number is 6,608,068.

JOSEPH K. McKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

1626
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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HOWARD M. PETERS
PETERS VERNY JONES & SCHMITT, LLP
425 SHERMAN AVENUE, SUITE 230
PALO ALTO, CA 94306

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OCT 12 2006

OFFICE OF PETITIONS

In re Application of :

Bakthan Singaram et al :
Application No. 10/456,895 :
Filed: June 5, 2003 :
Attorney Docket No. 480.94-2 :

DECISION ON PETITION
TO MAKE SPECIAL UNDER
37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed May 24, 2006, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a statement from Inventor Ritchie Wessling stating that he is over 65 years of age. Accordingly, the above-identified application has been accorded "special" status.

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.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 1618 for action on the merits commensurate with this decision.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Howard M. Peters
Peters, Verny, Jones, Schmitt & Aston, LLP
385 Sherman Avenue, Suite 6
Palo Alto, CA 94306

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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JOSEPH W. BERENATO, III
LINIAK BERENATO & WHITE, LLC
6550 ROCK SPRING DRIVE, SUITE 240
BETHESDA, MD 20817

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MAR 0 9 2006

OFFICE OF PETITIONS

In re Application of	:	
Jerry Crittenden	:	
Application No. 10/456,915	:	DECISION ON PETITION
Filed: June 9, 2003	:	TO WITHDRAW
Attorney Docket No. 16240.M295.CIP(2)	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 5, 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).

Thomas P. Liniak has been withdrawn as attorney or agent of record; all other attorneys remain of record.

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

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Laurie A. Axford
732 West Harbor Drive
San Diego CA 92101

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AUG 17 2009

OFFICE OF PETITIONS

In re Application of :
Laurie A. Axford :
Application No.: 10/456925 : ON PETITION
Filing or 371(c) Date: 06/05/2003 :
Attorney Docket Number: :
AXFORD001 :

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed July 6, 2009.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed July 22, 2008. The Office action set a three (3) period for reply. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on October 23, 2008. A Notice of Abandonment was mailed February 18, 2009.

Applicant files the present petition and includes an Amendment in response to the Office action. 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 is filed with the present petition; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 3691 for processing of the Amendment filed with the petition in the normal course of business.

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

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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OLYMPIC PATENT WORKS PLLC
P.O. BOX 4277
SEATTLE, WA 98104

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Edward G. Sherman, et al.
Application No. 10/456,927
Filed: June 5, 2003
Attorney Docket No. 35009.004C2

This is a decision in response to the petition, filed July 19, 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 a non-final Office action mailed January 16, 2007. On July 19, 2007, the present petition was filed. A Notice of Abandonment was subsequently mailed on August 6, 2007.

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

The application is being referred to Technology Center AU 2191 for consideration of the amendment filed July 19, 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
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Alexandria, VA 22313-1450
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JAN 2 3 2006

OFFICE OF PETITIONS

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

In re Application of :
Darin L. Lane et al :
Application No. 10/456,935 : ON PETITION
Filed: June 4, 2003 :
Attorney Docket No. 50539/MEG/E242 :

This is a decision on the petition, filed January 23, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 27, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3753 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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Paper No. _____

Date : January 23, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

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JAN 23 2006

OFFICE OF PETITIONS

SUBJECT : Withdrawal from Issue of

Applicant(s) :Darin L. Lane et al
Application No. :10/456,935
Filed :June 4, 2003

The above-identified application has been assigned Patent No. 6,988,507 and an issue date of January 24, 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 January 24, 2006:

> "All reference to Patent No. 6,988,507 to Darin L. Lane et al of Colorado for AXIAL INPUT FLOW DEVELOPMENT CHAMBER appearing in the Official Gazette of January 24, 2006 should be deleted since no patent was granted."

Karen Creasy

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

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89
Tamara Greene, ST-8C13

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MARY J. WILSON
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

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OFFICE OF PETITIONS

In re Application of
BATINIC-HABERLE, INES et al
Application No. 10/456,956
Filed: June 9, 2003
Attorney Docket No. 1579-828

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 10, 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 Mary J. Wilson #32,955 on behalf of all attorneys of record. All attorneys/agents of record have been withdrawn.

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

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

Telephone inquiries concerning this decision should be directed to Amelia Au at 571-272-7414.

Amelia Au
Petitions Examiner
Office of Petitions

cc: DUKE UNIVERSITY
SCIENCE & TECHNOLOGY DEVELOPMENT
DURHAM, NORTH CAROLINA 27708-0083

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

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INES BATINIC-HABERLE
1 COTSWOLD PLACE
DURHAM, NC 27707

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OFFICE OF PETITIONS

In re Application of :
Ines Batinic-Haberle, et al. :
Application No.: 10/456,956 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No.: 59062.00006.UTL1 :

This is a decision on the petition, filed June 18, 2008, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is not signed by an attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature of Kenneth E. Jenkins 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. Jenkins 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. Jenkins, 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 December 20, 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 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 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.*

The application is being referred to Technology Center AU 1624 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: KENNETH E. JENKINS
TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISOC, CA 94111-3834

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OFFICE OF PETITIONS

In re Patent No. 7,426,410	:	
ZULUAGA et al.	:	
Issue Date: September 16, 2008	:	DECISION ON REQUEST FOR
Application No. 10/456,979	:	RECONSIDERATION OF
Filed: June 6, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 12258-028001	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)" filed November 10, 2008, requesting that the patent term adjustment determination for the above-identified patent be corrected from six hundred seventy-seven (677) days to nine hundred twenty-nine (929) days.

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

On September 16, 2008, the above-identified application matured into U.S. Patent No. 7,426,410 with a patent term adjustment of 677 days. This request for reconsideration of patent term adjustment (including the required fee) was timely filed within two months of the issue date of the patent. See 37 CFR 1.705(d).

Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to Wyeth, a PTO delay under 35 U.S.C. 154(b)(1)(A) overlaps with a delay under 35 U.S.C. 154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that a portion of the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR 1.703(b), 252 of 357 days, does not overlap

with the period of adjustment due to examination delay, pursuant to 37 CFR 1.702(a), of 848 days as these periods do not occur on the same days.

The period of adjustment under 37 CFR 1.702(b) ("Three Year Delay") is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued.[1]

---

[1] 37 CFR 1.703(b) provides that the period of adjustment of the term of a patent shall not include the period equal to the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

(2)

(i) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3)

(i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181;

(ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed;

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and

(iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under 35 U.S.C. 151; and,

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

In this instance, the Three Year Delay period of 357 days is calculated based on the application having been filed under 35 U.S.C. 111(a) on June 6, 2003, and a request for continued examination ("RCE") having been filed in this application on May 29, 2007. The filing of a RCE cuts-off the applicant's ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment. 37 CFR 1.703(b)(1).

The 848 day period of adjustment due to examination delay, pursuant to 37 CFR 1.702(a), is the sum of:

- a period of delay of 768 days for the failure by the Office to mail at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), pursuant to § 1.702(a)(1). (The Office mailed a nonfinal Office action on September 13, 2006, 14 months and 768 days after the application was filed on June 6, 2003.);

- a period of delay of 6 days for the failure by the Office to respond to a reply under 35 U.S.C. 132 not later than four months after the date on which the reply was filed, pursuant to § 1.702(a)(2). (The Office did not respond to the reply of October 20, 2006, until February 26, 2007, 4 months and 6 days after the date on which the reply was filed.); and,

- a period of delay of 74 days for the failure by the Office to respond to a reply under 35 U.S.C. 132 not later than four months after the date on which the reply was filed, pursuant to § 1.702(a)(2). (The Office did not respond to the reply of August 9, 2007, until February 21, 2008, 4 months and 74 days after the date on which the reply was filed.)

Under 37 CFR 1.703(f), patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR 1.702 reduced by the period of time equal to the period of time during which patentees failed

to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704. In other words, the period of Office delay reduced by the period of applicant delay. The period of reduction of 171 days for applicant delay is not in dispute.

Patentees do not dispute that the total period of Office delay is the sum of the period of Three Year Delay terminated by the filing of a RCE (357 days) and the period of Examination Delay (848 days) to the extent that these periods of delay are not overlapping. However, patentees contend that 99 days of the period of delay pursuant to 37 CFR 1.702(a)(1) (August 7, 2004 to May 29, 2007) and 6 days of the period of delay pursuant to 37 CFR 1.702(a)(2) (February 21, 2007 to February 26, 2007) overlap with the Three Year Delay period (June 7, 2006 to May 29, 2007). Patentees aver that this overlapping period is the 105 days running from June 7, 2006 to September 13, 2006 and February 21, 2007 to February 26, 2007. Accordingly, patentees submit that the total period of adjustment for Office delay is 1,110 days, which is the sum of the period of Three Year Delay (357 days) and the period of Examination Delay (848 days), reduced by the period of overlap (105 days). As such, patentees assert entitlement to a patent term adjustment of 929 days (357 + 848 reduced by 105 overlap - 171 (applicant delay)).

Patentees' arguments have been considered, but are not persuasive. The Office concurs that as of the filing of the RCE on May 29, 2007, the application was pending three years and 357 days after its filing date. Further, the Office agrees that the actions detailed above were not taken within the specified time frame, and thus, the entry of a period of adjustment of 848 days is correct. At issue is whether patentees should accrue 252 days of patent term adjustment (per patentees' definition of overlap) for the Office taking in excess of three years to issue the patent, as well as, 848 days for Office failure to take a certain action within a specified time frame (or Examination Delay).

The Office contends that all 357 days overlap. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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

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

Likewise, 37 CFR 1.703(f) provides that:

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

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

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 56366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark*

Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004).

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

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

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and

> administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[2]

As such, the period for over 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.

It is noted, however, that delays resulting in the Office's failure to meet the time frames specified in 35 U.S.C. 154 (b)(1)(A) (the "fourteen-four-four-four-" provisions) are not always overlapping with a delay resulting in the Office's failure to issue a patent within the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) because not all application pendency time is counted toward this three-year period. See 35 U.S.C. 154 (b)(1)(B)(i)-(iii).

In this instance, all application pendency time is not counted toward the three-year period. A request for continued examination was filed on May 29, 2007. The period subsequent to the filing of the RCE is not included in the three-year time frame specified in 35 U.S.C. 154(b)(1)(B). See 35 U.S.C. 154(b)(1)(B)(i). Thus, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period from the filing of the application on June 6, 2003, to the filing of the RCE on May 29, 2007. Thus, only the 774 days of patent term adjustment accorded prior to the filing of the RCE for the Office failing to respond within specified time frames are considered in determining overlap. The 74 days for Office delay occurring subsequent to the filing of the RCE is not considered. The 357

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[2] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

days attributed to Office delay pursuant to 37 CFR 1.702(b) for failure to issue the patent within three years is determined to overlap with the 774 days attributed to Office delay pursuant to 1.702(a)(1) and (2). Accordingly, at issuance, the Office properly entered no additional days of patent term adjustment for the Office taking in excess of three years to issue the patent. 848 (768 + 6 + 74) days was determined to be the actual number of days the issuance of the patent was delayed.

In view thereof, no adjustment to the patent term will be made. The revised determination of patent term adjustment at the time of the issuance of the patent will remain 677 days.

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 7,426,410	:	DECISION ON REQUEST FOR
ZULUAGA et al.	:	RECONSIDERATION OF
Issue Date: September 16, 2008	:	PATENT TERM ADJUSTMENT AND
Application No. 10/456,979	:	NOTICE OF INTENT TO ISSUE
Filed: June 6, 2003	:	CERTIFICATE OF CORRECTION
Atty Docket No. 12258-028001	:	

This is a decision on the petition filed on Monday, August 31, 2009,[1] 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 nine hundred twenty-nine (929) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent** that the term of the above-identified patent is extended or adjusted by nine hundred twenty-eight (928) days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on June 7, 2006, and ends on May 28, 2007, the day before the RCE was filed, and is 356 (not 357) days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 928, not 929 days.

[1] This petition was timely filed within two months of the decision on the request for reconsideration of patent term adjustment mailed June 30, 2009.

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

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

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred twenty-eight (928) days.**

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,426,410 B2

DATED : Sep. 16, 2008 **DRAFT**

INVENTOR(S) : ZULUAGA 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 677 days

Delete the phrase "by 677 days" and insert – by 928 days--

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In re Application of :
Evans et al. :
Application No. 10/456,982 : ON PETITION
Filed: 6 June, 2003 :
Atty Docket No. 00630/100G703-US4 :

This is a decision on the petitions under 37 CFR 1.183 and 37 CFR 1.48(a) and (b), filed on 15 September, 2006, which are treated as (1) a petition under 37 CFR 1.48(a) to amend the inventive entity by the deletion of Eric Beer and Jianxiong Zhang as inventors, and (2) under 37 CFR 1.48(b) to amend the inventive entity by the deletion of Elissa Ferris as an inventor, and; (3) with regard to Jianxiong Zhang, a petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.48(a)(2) which requires a statement from the person being deleted. This is also a decision on the petition to withdraw the holding of abandonment filed on 13 October, 2006.

The petitions are **GRANTED**.

Petition to Withdraw the Holding of Abandonment.

A Notice of Abandonment was mailed on 26 September, 2006, stating that the application was abandoned for failure to timely file a proper reply to the non-final Office action mailed on 12 January, 2006.

Petitioners assert that a timely reply to the non-final Office action, consisting of an amendment and a three (3) month extension of time, was filed on 12 July, 2006, and that the holding of abandonment should be withdrawn.

Upon review, it is noted that the reply filed on 12 July, 2006, has been located and associated with the above-identified file. As such, it is obvious that a response was timely filed, but was not matched with the correct application due to Office error.[1] As such, there is no abandonment in fact. The Office regrets the error.

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

Petitions Under 37 CFR 1.183 and §§ 1.48(a) & (b).

On 6 June, 2003, the above-identified application was filed. The application papers included a declaration in compliance with 37 CFR 1.63 listing Mark J. Evans, Marshall S. Scicchitano, Ashok R. Bapat, Eric Beer, Ramesh A. Bhat, Elissa Ferris, Robert Mastroeni, Jianxing Zhang, and Sotirios K. Karathanasis as joint inventors.

On 15 September, 2006, the present petition under 37 CFR 1.48 and and 1.183 was filed, whereby petitioners request that Eric Beer, Elissa Ferris, and Jianxiong Zhang be deleted as inventors.

Petitioners request that Eric Beer and Jianxiong Zhang should be deleted under 37 CFR 1.48(a). Petitioners additionally request that Elissa Ferris be deleted as an inventor under 37 CFR 1.48(b).

Petitioners further request waiver of 37 CFR 1.48(a) under 37 CFR 1.183 in that named inventor Zhang has refused to sign the statement of deceptive intent required by declaration naming the actual inventors as required by 37 CFR 1.48(a)(2).

Petitioners assert that a copy of the statement of lack of deceptive intent was sent to inventor Zhang's last known address, but that Zhang has failed to sign and return statement of lack of deceptive intent. Petitioners have shown that the request was sent to Zhang's last known address in October and December, 2003,

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[1] It is noted that the transmittal letter filed on 12 July, 2006, miscaptions the application number as "10/456,892" (*sic*). All of the other information on the transmittal sheet is correct. Additionally, the correct application number is contained on the other papers filed on 12 July, 2006. As such, the Office should have timely matched the papers filed on 12 July, 2006, with the correct application. See MPEP 508.03.

and again in January and February, 2004. No response was received to the October, 2003, mailing. Zhang signed a certificate of mailing acknowledging receipt of the December, 2003, mailing, but did not return the statement of lack of deceptive intent. Additionally, the January and February, 2004, mailings were returned as "unclaimed".

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

(1) a request including a statement from each person being added and each person being deleted as an inventor that the error occurred without deceptive intention on his or her part;

(2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47;

(3) the fee set forth in 37 CFR 1.17(i), and

(4) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

37 CFR 1.48(b) requires that an amendment to the named inventive entity due to amendment or cancellation of claims so that fewer than all of the currently named inventors are the actual inventors of the invention being claimed in the nonprovisional application must be accompanied by:

(1) A request, signed by a party set forth in § 1.33(b), to correct the inventorship that identifies the named inventor or inventors being deleted and acknowledges that the inventor's invention is no longer being claimed in the nonprovisional application; and

(2) the processing fee set forth in § 1.17(i).

As a result of papers filed on 15 September, 2006, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48(a)(2) and 37 CFR 1.48(b)(1).

In view of the efforts recounted in the petition to obtain the signature of Jianxiong Zhang on the statement required by 37 CFR 1.63 and 1.48(a)(2), it is agreed that justice would be served by waiving the requirement for his signature on the oath or declaration.

The inventorship of this application has been changed by the deletion of: Eric Beer, Hanover, MA; Jianxiong Zhang, Wayne, PA, and Elissa Ferris, Saline, MI.

Office PALM records have been corrected to reflect the correct inventorship of the application. A corrected Filing Receipt is enclosed for petitioner's records.

Petitioners should note that the fee for a petition under 37 CFR 1.183 is $400.00. Although the petition fee under 37 CFR 1.48 has already been charged. The petition fee due for the petition under 37 CFR 1.183 is also due and will be charged to counsel's deposit account, as authorized in the petition.

The application is referred to Technology Center Art Unit 1652 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

Encl: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/456,982	06/06/2003	1652	1676	00630/100G703-US4	4	44	7

CONFIRMATION NO. 6806

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

CORRECTED FILING RECEIPT

OC000000021330914

Date Mailed: 11/22/2006

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)

Mark J. Evans, Radnor, PA;
Marshall S. Scicchitano, Douglasville, PA;
Ashok R. Bapat, Blue Bell, PA;
Ramesh A. Bhat, King of Prussia, PA;
Robert Mastroeni, Plymouth Meeting, PA;
Sotirios K. Karathanasis, Saline, MI;

Assignment For Published Patent Application

Wyeth

Power of Attorney:

Gordon Coplein--19165
Bert Lewen--19407
Marc Gross--19614
Michael Sweedler--19937
Paul Fields--20298
Egon Berg--21117
Henry Sternberg--22408
Bruce Eisen--22847
S Ludwig--25351
Melvin Garner--26272

Domestic Priority data as claimed by applicant

This application is a DIV of 09/924,946 08/08/2001
which claims benefit of 60/223,763 08/08/2000
and claims benefit of 60/255,838 12/15/2000

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
US10/456,982

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Novel member of the lysyl oxidase gene family

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

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

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

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed

by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

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FOLEY & LARDNER, LLP
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

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SEP 18 2007

OFFICE OF PETITIONS

In re Application of :
Zhouyue Pi, et. al. :
Application No. 10/456,987 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 061602-1426 :

This is a decision on the petition under 37 CFR 1.137(b), filed on September 11, 2006, to revive the above-identified application. The delay in responding is regretted.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 10, 2006.

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

Petitioner states that a response was timely filed on April 20, 2006 via First Class Mail. Petitioner further states that the response contained incorrect serial No.10/456,981 instead of 10/456,987, and that a copy of the response filed on April 20, 2006 was being attached. However, a review of the above application and the incorrect application of 10/456,981 fail to show the original and/or a copy of the response filed on April 20, 2006. Therefore, before revival can occur, a response or a copy of the response filed on April 20, 2006 and the return receipt postcard stamped by the USPTO or some other form of evidence that shows that the Office received the response on or after April 20, 2006 should be submitted.

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

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

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 80278
SAN DIEGO, CA 92138-0278

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JUN 26 2008

OFFICE OF PETITIONS

In re Application of :
Zhouyue Pi, et. al. :
Application No. 10/456,987 : ON PETITION
Filed: June 6, 2003 :
Attorney Docket No. 061602-1426 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 19, 2007, to revive the above-identified application.

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

The petition states that the "proposed reply and required fee for the above-noted Office Action in the form of a Request for Continued Examination, 3 months Extension of Time, and Amendment pursuant to 37 § C.F.R. 114 is enclosed herewith". However, the Office did not receive the Request for Continued Examination (RCE) or fee under 37 CFR 1.114, as so stated in the petition. Further, petitioner should note that as prosecution for the above application is not closed, an RCE and fee would not be an appropriate response to the non-final Office action mailed on February 10, 2006. Therefore, this application file is being referred to Technology Center Art Unit 2617 for review of the amendment filed with the instant petition.

Additionally, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1,050 extension of time fee was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited back to petitioner's credit card, in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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In re Patent No. 6991029
Issue Date: January 31,2006
Application No. 10456998
Filed: June 6,2003
Attorney Docket No. 5442.7US01

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

This is a decision on the electronic petition, filed July 2,2010 ,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 July 2,2010 . 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.

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)
6,991,029	2006-01-31	10/456,998	2003-06-06	05442.0007US01

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	/Dennis R. Daley/	Date (YYYY-MM-DD)	2010-07-02
Name	Dennis R. Daley	Registration Number	34994

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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KAGAN BINDER, PLLC
SUITE 200, MAPLE ISLAND BUILDING
221 MAIN STREET NORTH
STILLWATER MN 55082

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OCT 0 2 2006

OFFICE OF PETITIONS

In re Application of
MITCHELL, et al.
Application No. 10/457,033
Filed: June 6, 2003
Attorney Docket No. GSC0002/US/2

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 30, 2006.

The request is **NOT APPROVED**.

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

The request cannot be approved because there remains less than 30 (thirty days) between the date of this decision and the maximum extendable time period for filing a response to the Office action mailed on April 14, 2006.

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 A. Graves at 571-272-7253.

Amelia Au
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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STILLWATER MN 55082

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OCT 10 2006

OFFICE OF PETITIONS

In re Application of

ROBERTS
Application No. 10/457038
Filed: June 6, 2003
Attorney Docket No. GSC0014/US

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 1, 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 Dale A. Bjorkman on behalf of all attorneys of record who are associated with customer No. 33072. All attorneys/agents associated with the Customer Number 33072 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

There is an outstanding Office action mailed July 27, 2006 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at 571-272-7253.

David Bucci
Petitions Examiner
Office of Petitions

cc: **Stephen C. Roberts, MD**
5418 Mayview Road
Minnetonka, MN 55345

cc: **GelStat Corporation**
Southpoint Office Center
1650 West 82nd Street, Suite 1040
Bloomington, MN 55431

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

STATTLER JOHANSEN & ADELI
P O BOX 51860
PALO ALTO CA 94303

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FEB 17 2004

OFFICE OF PETITIONS

In re Application of :
Takatsugu Kamata and Kimitake :
Utsunomiya : DECISION REFUSING STATUS
Application No. 10/457,056 : UNDER 37 CFR 1.47(a)
Filed: June 5, 2003 :
For: QUADRATIC VIDEO DEMODULATION
WITH BASEBAND NYQUIST FILTER

This is in response to the "Petition Under 37 CFR 1.47(a)," filed January 16, 2004 (Certificate of Mailing date, January 12, 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 on June 5, 2003 without an executed oath or declaration and naming Takatsugu Kamata and Kimitake Utsunomiya as joint inventors.

Accordingly, on August 12, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and filing fee, and a surcharge for their late filing.

In response, on January 16, 2003, the instant petition was filed with a three (3) month extension of time.

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

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been

presented with the application papers (specification, claims and drawings);

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

(3) the petition fee; and

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

Applicant lacks items (3), as set forth above.

As to item (3), the required $130.00 petition fee has not been submitted. Earl D. Brown, Jr. is not listed as an authorized user for Deposit Account No. 50-1128 and as such, the petition fee cannot be charged to the deposit account.

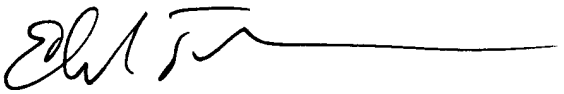
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

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

By hand: Customer Service Window
2011 South Clark Place
Crystal Plaza Two (left side entrance of building)
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703) 306-9200.



Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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P O BOX 51860
PALO ALTO CA 94303

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APR 22 2004

OFFICE OF PETITIONS

In re Application of :
Takatsugu Kamata and Kimitake :
Utsunomiya : DECISION REFUSING STATUS
Application No. 10/457,056 : UNDER 37 CFR 1.47(a)
Filed: June 5, 2003 :
For: QUADRATIC VIDEO DEMODULATION
WITH BASEBAND NYQUIST FILTER

This is in response to the "Petition Under 37 CFR 1.47(a)," filed January 16, 2004 (Certificate of Mailing date, January 12, 2004), and the "Request For Reconsideration of Petition Under 37 CFR 1.47(a)," filed April 12, 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 on June 5, 2003 without an executed oath or declaration and naming Takatsugu Kamata and Kimitake Utsunomiya as joint inventors.

Accordingly, on August 12, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and filing fee, and a surcharge for their late filing.

In response, on January 16, 2003, the petition under 37 CFR 1.47(a) was filed with a three (3) month extension of time.

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

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

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

(3) the petition fee; and

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

Applicant lacks items (1), as set forth above.

As to item (1), applicant appears to demonstrate that the non-signing inventor was only presented with the declaration. Unless non-signing inventor was presented with a copy of the application papers (specification, claims and drawings), the non-signing inventor could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given. Accordingly, Rule 47 applicant failed to show or provide proof that the inventor has refused to sign the declaration. See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a copy of the application papers was presented to the inventor, but that he did not respond to, or refused, the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

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

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

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

By hand: Customer Service Window
2011 South Clark Place
Crystal Plaza Two (left side entrance of building)
Arlington, VA

Telephone inquiries related to 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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STATTLER JOHANSEN & ADELI
P.O. BOX 51860
PALO ALTO, CA 94303

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SEP 10 2004

OFFICE OF PETITIONS

In re Application of :
Takatsugu Kamata and Kimitake :
Utsunomiya : DECISION GRANTING PETITION
Application No. 10/457,056 : UNDER 37 CFR 1.47(a)
Filed: June 5, 2003 :
Title: QUADRATIC VIDEO
DEMODULATION WITH BASEBAND
NYQUIST FILTER

This is in response to the "Request For Reconsideration of Petition Under 37 CFR 1.47(a)," filed August 24, 2004 (Certificate of Mailing Date: August 19, 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 Technology Center 2600 for examination *in due course*.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MR. KIMITAKE UTSUNOMIYA
4-1-14 HIROO
SHIBUYA-KU, TOKYO, 150-0012
JAPAN

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SEP 10 2004

OFFICE OF PETITIONS

In re Application of
Takatsugu Kamata and Kimitake Utsunomiya
Application No. 10/457,056
Filed: June 5, 2003
Title: QUADRATIC VIDEO DEMODULATION WITH BASEBAND NYQUIST FILTER

Dear MR. KIMITAKE UTSUNOMIYA:

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

STATTLER JOHANSEN & ADELI
P.O. BOX 51860
PALO ALTO, CA 94303

OIPE
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PTO/SB/83 (04-05)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	10/457,063
Filing Date	June 6, 2003
First Named Inventor	Donavon D. Nelson
Art Unit	1734
Examiner Name	James D. Sells
Attorney Docket Number	IPG.07USU1

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

Please withdraw me as attorney or agent for the above identified patent application, and

- ☐ all the attorneys/agents of record.
- ☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- ☑ the attorneys/agents associated with Customer Number: 27479

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

Approved
Jacqueline M. Stone, Director
Technology Center 1700
2/15/05

The reasons for this request are: New counsel is being appointed

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

☑ The address associated with Customer Number: 34205

OR

☑ Firm or Individual Name	Barbara A. Wrigley Oppenheimer Wolff & Donnelly LLP				
Address	Plaza VII, Suite 3300 45 South Seventh Street				
City	Minneapolis	State	MN	Zip	55402-1609
Country	USA				
Telephone	612-607-7000	Email	bwrigley@oppenheimer.com		
Signature					
Name	William W. Cochran	Registration No.	26,652		
Date	4/22/05	Telephone No.	970-492-1100		

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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NIXON & VANDERHYE PC
901 NORTH GLEBE ROAD
11TH FLOOR
ARLINGTON, VA 22203

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MAY 10 2006

OFFICE OF PETITIONS

In re Application of
James D. Crapo et al
Application No. 10/457,071
Filed: June 9, 2003
Attorney Docket No. 1579-827

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 30, 2005.

The petition is **NOT APPROVED**.

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

The request cannot be approved because the stated reason for the request is "[r]equest of Licensee." This statement does not satisfy one of the valid reasons for withdrawal under 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.

This application is being referred to Technology Center AU 1616.

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

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PAUL, HASTINGS, JANOFSKY & WALKER LLP
875 15TH STREET, NW
WASHINGTON, DC 20005

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JUL 29 2008

OFFICE OF PETITIONS

In re Application of	:	
James S. Crapo, et al.	:	
Application No. 10/457,071	:	DECISION ON PETITION
Filed: June 9, 2003	:	TO WITHDRAW
Attorney Docket No. 59062.00012CON2	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 31, 2008

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Paul, Hasting, Janofsky & Walker, LLP has been revoked by the assignee of the patent application on March 18, 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.

April M. Wise
Petitions Examiner
Office of Petitions

cc: TOWNSEND & TOWNSEND & CREW, LLP
ATTN: KENNETH JENKINS, ESQ.
12730 HIGH BLUFF DRIVE
SUITE 400
SAN DIEGO, CA 92130

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 5

THE ECLIPSE GROUP
C/O GREGORY GULLIVER
10TH FLR #A768
28 E JACKSON
CHICAGO IL 60604

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JAN 07 2004

OFFICE OF PETITIONS

In re Application of
Andrei Anatolyevich Axenov,
Nikolay Alexandrovich Belov,
Vadim Semenovich Zolotorevskij
Application No. 10/457,136
Filed: June 9, 2003
Attorney Docket No. MI00001C1

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(b)

This is in response to petition under 37 CFR 1.47(b), filed December 8, 2003.

The petition under 37 CFR 1.47(b) is **GRANTED**.

The above-identified application was filed on June 9, 2003, without an executed oath or declaration. Accordingly, on August 6, 2003, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition under 37 CFR 1.47(b) on December 8, 2003, and paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, petitioner purchased a two month extension of time and included a certificate of mailing dated December 4, 2003. Accompanying the petition was a declaration signed by Joseph Demme, president of assignee Mantraco International Inc., listing the name, citizenship, and residence of nonsigning inventors Andrei Anatolyevich Axenov, Nikolay Alexandrovich Belov, and Vadim Semenovich Zolotorevskij.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that all of the inventors cannot be reached or refuse to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable

damage; (4) the petition fee; (5) a statement of the last known address of the non-signing inventor; and (6) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application.

On petition, Rule 47 applicant has included, *inter alia*, a copy of a letter evidencing the inventors refusal to sign the application for patent, and a signed "Declaration and Acknowledgement [sic] of Assignment" in which the inventors stated they were presented with the corresponding PCT application.

The petition filed on December 8, 2003 has been reviewed and found to be in compliance with 37 CFR 1.47(b). The declaration filed with the petition has been determined to be in compliance with 37 CFR 1.63.

This application is hereby accorded Rule 1.47(b) status.

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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ANDREI ANATOLYEVICH AXENOV
KV 34 D 26
OUL NOVATOROV
MOSCOW
RUSSIA

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JAN 07 2004

OFFICE OF PETITIONS

In re Application of
Andrei Anatolyevich Axenov,
Nikolay Alexandrovich Belov,
Vadim Semenovich Zolotorevskij
Application No. 10/457,136
Filed: June 9, 2003
Title: ALUMINUM-BASED MATERIAL AND A METHOD FOR MANUFACTURING PRODUCTS FROM ALUMINUM-BASED MATERIAL

LETTER

Dear Mr. Axenov:

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (703) 305-0272. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Cliff by

Cliff Congo
Petitions Attorney
Office of Petitions

Gregory B. Gulliver (phone: 312-720-0308)
10 Flr. #A768, 28 E. Jackson
Chicago, IL 60604

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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NIKOLAY ALEXANDROVICH BELOV
KV 42 D25
SIRENEVY BOUL
MOSCOW
RUSSIA

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JAN 07 2004

OFFICE OF PETITIONS

In re Application of :
Andrei Anatolyevich Axenov, :
Nikolay Alexandrovich Belov, :
Vadim Semenovich Zolotorevskij : LETTER
Application No. 10/457,136 :
Filed: June 9, 2003 :
Title: ALUMINUM-BASED MATERIAL AND A METHOD FOR MANUFACTURING PRODUCTS FROM ALUMINUM-BASED MATERIAL

Dear Mr. Belov:

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (703) 305-0272. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Cliff by

Cliff Congo
Petitions Attorney
Office of Petitions

Gregory B. Gulliver (phone: 312-720-0308)
10 Flr. #A768, 28 E. Jackson
Chicago, IL 60604

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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VADIM SEMENOVICH ZOLOTOREVSKIJ
KV 370 D 86
LENINSKY PROSPECT
MOSCOW
RUSSIA

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JAN 07 2004

OFFICE OF PETITIONS

In re Application of
Andrei Anatolyevich Axenov,
Nikolay Alexandrovich Belov,
Vadim Semenovich Zolotorevskij
Application No. 10/457,136
Filed: June 9, 2003
Title: ALUMINUM-BASED MATERIAL AND A METHOD FOR MANUFACTURING PRODUCTS FROM ALUMINUM-BASED MATERIAL

LETTER

Dear Mr. Zolotorevskij:

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

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (703) 305-0272. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Cliff Congo
Petitions Attorney
Office of Petitions

Gregory B. Gulliver (phone: 312-720-0308)
10 Flr. #A768, 28 E. Jackson
Chicago, IL 60604

UNITED STATES PATENT AND TRADEMARK OFFICE

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THE ECLIPSE GROUP
C/O GREGORY GULLIVER
10TH FLR., #A768
28 E. JACKSON
CHICAGO, IL 60604

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OFFICE OF PETITIONS

In re Application of	:	
Axenov et al.	:	
Application No. 10/457,136	:	ON PETITION
Filed: June 9, 2003	:	
Attorney Docket No. MI00001C1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 12, 2005, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the final Office action mailed October 18, 2004. A two-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, this application became abandoned on March 19, 2005. A Notice of Abandonment was mailed June 29, 2005.

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

This matter is being referred to Technology Center 1700 for 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) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/17/04

TO SPE OF : ART UNIT 1725

SUBJECT : Request for Certificate of Correction on Patent No.: 6720841

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

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

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

Lamonte Newsome

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

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

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

Comments:

OK to enter

SPE — Art Unit 1725

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BANNER & WITCOFF, LTD
AND ATTORNEYS FOR CLIENT NUMBER 011738
10 SOUTH WACKER DRIVE
SUITE 3000
CHICAGO IL 60606

COPY MAILED

DEC 1 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Cross et al.	:	DECISION ON APPLICATION
Application No. 10/457,212	:	FOR
Filed: June 9, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 011738.00155	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PTA DERTEMINATION," filed October 30, 2007, requesting reconsideration of the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of four hundred (400) 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 **seven hundred seventy-one (771) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 2, 2007, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application, advising applicants that the patent term adjustment to date is four hundred (400) days. In response, applicants timely[1] filed the instant request for reconsideration of the patent term adjustment, accompanied by an authorization to charge the Deposit Account for the fee set forth in 37 CFR 1.18(e). Applicants dispute the reduction pursuant to 37 CFR

[1] PALM Records indicate that the issue fee payment was received on October 30, 2007

1.704(b) of 183 days on the ground that they did not fail to engage in reasonable efforts to conclude examination of the application.

The application history has been reviewed and it has been determined that the initial patent term adjustment of 400 days is incorrect. The Office mailed a nonfinal Office action on March 20, 2006. However, the nonfinal Office action was returned to the USPTO as undeliverable. The record supports a conclusion that this was due to an error on the part of the Office in mailing the nonfinal Office action to applicants. Accordingly, the Office mailed a letter restarting the period for reply (and re-mailing the nonfinal Office action) on September 26, 2006.

Under these circumstances, applicants are correct that they did not fail to engage in reasonable efforts within the meaning of 37 CFR 1.704(b). Their response, filed December 22, 2006, was received in the USPTO within three months of the date of the nonfinal Office action as re-mailed on September 26, 2006. See 37 CFR 1.704(b). Thus, the Office should not have assessed applicants a delay of 183 days.

With respect to the period of adjustment of patent term pursuant to 37 CFR 1.703(a)(1), the Office's delay should be calculated using the re-mailing date of the nonfinal Office action of September 26, 2006. Thus, the period of adjustment is 778 days, the number of days in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), August 10, 2004, and ending on the re-mailing date of the nonfinal Office action, September 26, 2006.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is **seven hundred seventy-one (771) days.**

The Office will charge counsel's Deposit Account for the $200.00 fee set forth in 37 CFR 1.18(e), as requested. No additional fee is required.

Applicants are reminded that any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent

term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f).

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Monday
Date: 12/10/2007

PALM INTRANET

Time: 19:56:50

PTA Calculations for Application: 10/457212			
Application Filing Date:	06/09/2003	PTO Delay (PTO):	590
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	190
Post-Issue Petitions:	0	Total PTA (days):	771
PTO Delay Adjustment:	371		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
51	12/10/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		590	
50	12/10/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	183		
49	12/10/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	778		
41	08/02/2007	MAIL NOTICE OF ALLOWANCE			
40	08/02/2007	MAIL EXAMINER'S AMENDMENT			
39	08/01/2007	ISSUE REVISION COMPLETED			
38	08/01/2007	DOCUMENT VERIFICATION			
37	08/01/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
36	08/01/2007	CASE DOCKETED TO EXAMINER IN GAU			
35	08/01/2007	EXAMINER'S AMENDMENT COMMUNICATION			
34	07/25/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
33	07/30/2007	NOTICE OF ALLOWABILITY			
32	07/09/2007	DATE FORWARDED TO EXAMINER			
31	06/22/2007	AMENDMENT AFTER FINAL REJECTION		7	29
30	06/22/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	03/15/2007	MAIL FINAL REJECTION (PTOL - 326)			
28	03/15/2007	FINAL REJECTION			
27	01/11/2007	PARALEGAL TD ACCEPTED			
26	01/09/2007	DATE FORWARDED TO EXAMINER			
25	12/22/2006	RESPONSE AFTER NON-FINAL ACTION		183	22
24	09/26/2006	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
23	09/18/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			

22	03/22/2006	MAIL NON-FINAL REJECTION	590		-1
21	03/20/2006	NON-FINAL REJECTION			
20	03/30/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
19	09/17/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
18	10/06/2005	CASE DOCKETED TO EXAMINER IN GAU			
17	03/30/2005	REFERENCE CAPTURE ON IDS			
16.7	03/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	03/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	03/31/2004	CASE DOCKETED TO EXAMINER IN GAU			
14	03/04/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	03/04/2004	REFERENCE CAPTURE ON IDS			
12.7	09/17/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	09/17/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/04/2004	CASE DOCKETED TO EXAMINER IN GAU			
10	09/02/2003	APPLICATION RETURN FROM OIPE			
9	09/03/2003	APPLICATION IS NOW COMPLETE			
8	09/02/2003	APPLICATION RETURN TO OIPE			
7	09/02/2003	APPLICATION DISPATCHED FROM OIPE			
6	09/03/2003	APPLICATION IS NOW COMPLETE			
5	08/11/2003	ADDITIONAL APPLICATION FILING FEES			
4	08/11/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
3	07/17/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
2	06/19/2003	CLEARED BY OIPE CSR			
1	06/09/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

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Paper No. 092204

SHELDON & MAK, INC.
225 SOUTH LAKE AVENUE
9TH FLOOR
PASADENA, CA 91101

MAILED

OCT 07 2004

In re Application of:
PANG HONG FAN
Serial No.: 10/457,214
Filed: June 09, 2003
Attorney Docket No.: **14469**

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed August 11, 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 Danton K. Mak, on behalf of himself and all the attorneys/agents of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

There are no attorneys/agents of record at this time.

All future communications from the Office will be directed the inventor, Pang Hong Fan, 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: PANG HONG FAN
15TH FLOOR – D, NO. 81, SEC. 1
HSINTAI 5TH ROAD
HSITZU CITY, TAIPEI HSIEN
TAIWAN, R.O.C.

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MAIL Paper No. 3

BRIAN ROFFE, ESQ
11 SUNRISE PLAZA, SUITE 303
VALLEY STREAM NY 11580-6170

MAR 0 3 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
David S. Breed :
Application No. 10/457,238 : DECISION ON PETITION
Filed: June 9, 2003 : TO MAKE SPECIAL
For: **LOW POWER REMOTE ASSET MONITORING** :

This is a decision on the petition to make special filed October 14, 2003 (paper No. 2) under 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 copy of Mr. Breed's passport showing his birth date, in support of the petition, evidencing that he 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.

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

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DEAN D. SMALL
THE SMALL PATENT LAW GROUP LLP
225 S. MERAMEC, STE. 725T
ST. LOUIS, MO 63105

Mail Date: 04/20/2010

Applicant	: Andreas Heimdal	: DECISION ON REQUEST FOR
Patent Number	: 7606402	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/457,244	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1264** 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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CHARLES W. ALMER
NATIONAL STARCH AND CHEMICAL
10 FINDERNE AVENUE
BRIDGEWATER NJ 08807

MAILED

JUN 23 2010

OFFICE OF PETITIONS

In re Application of	:	
Andrew Slark	:	
Application No. 10/457,260	:	DECISION ON PETITION
Filed: June 9, 2003	:	
Attorney Docket No. 3031.BDG	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 28, 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 a proper After-Final Amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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 notify the Office. Further, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, the request for a change of correspondence address cannot be accepted. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. Therefore, 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) 272-7751.

This application is being referred to Technology Center AU 1796 for examination in due course.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: James E. Piotrowski
Henkel Corporation
One Henkel Way
Rocky Hill, CT 06067

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Paper No. 4

Donald O. Nickey
Cardinal Health, Inc.
7000 Cardinal Place
Dublin, OH 43017

COPY MAILED

FEB 0 9 2004

OFFICE OF PETITIONS

In re Application of
Erkoboni, Vladyka Jr., Sweriduk, and Favara
Application No. 10/457,270
Filed: June 9, 2003
Attorney Docket No. RPS6105C1-US
For: HYDROLYZED CELLULOSE GRANULATIONS OF PARTIAL SALTS OF DRUGS

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed January 6, 2004.

The petition is **granted**.

Petitioner has shown that the non-signing inventors have constructively 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 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 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. 5

David F. Erkoboni
35 Shara Lane
Pennington, NJ 08534

COPY MAILED

FEB 09 2004

OFFICE OF PETITIONS

Letter

In re Application of
Erkoboni, Vladyka Jr., Sweriduk, and Favara
Application No. 10/457,270
Filed: June 9, 2003
Attorney Docket No. RPS6105C1-US
For: HYDROLYZED CELLULOSE GRANULATIONS OF PARTIAL SALTS OF DRUGS

Dear Mr. Erkoboni:

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: Donald O. Nickey
Cardinal Health, Inc.
7000 Cardinal Place
Dublin, OH 43017

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Paper No. 6

Christopher A. Sweriduk
315 Stonyhill Drive
Chalfont, PA 18914

COPY MAILED

FEB 09 2004

OFFICE OF PETITIONS

Letter

In re Application of
Erkoboni, Vladyka Jr., Sweriduk, and Favara
Application No. 10/457,270
Filed: June 9, 2003
Attorney Docket No. RPS6105C1-US
For: HYDROLYZED CELLULOSE GRANULATIONS OF PARTIAL SALTS OF DRUGS

Dear Mr. Sweriduk:

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: Donald O. Nickey
Cardinal Health, Inc.
7000 Cardinal Place
Dublin, OH 43017

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Paper No. 8

SAMUELS GAUTHIER & STEVENS
ATT: MAURICE E. GAUTHIER
SUITE 3300
225 FRANKLIN STREET
BOSTON, MA 02110

COPY MAILED

SEP 16 2004

OFFICE OF PETITIONS

In re Application of :
T. Michael Shore et al :
Application No. 10/457,274 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 1198 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 27, 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 Corrected Application Papers (Notice) mailed August 8, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 9, 2003.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.[1]

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

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

[1] Effective September 27, 2004, the phone number will be 571-272-3220.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: COCX

DATE : 3/16/06

TO SPE OF : ART UNIT 2661

SUBJECT : Request for Certificate of Correction for Appl. No.: 10457276 Patent No.: 6985474

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

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

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

Valerie Jackson

Certificates of Correction Branch

703-308-9390 ext. 114

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

_____

_____

_____

_____

_____ 2616

SPE **Art Unit**

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Kirkpatrick & Lockhart Nicholson Graham LLP
State Street Financial Center
One Lincoln Street
Boston, MA 0211-2950

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SEP 0 6 2006

OFFICE OF PETITIONS

In re Application of :
James H. Lowell et al. :
Application No. 10/457,286 : DECISION ON PETITION
Filed: June 9, 2003 : TO WITHDRAW
Attorney Docket No. L0021/7000 : 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 25, 2006.

The request is **APPROVED**.

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

The request was signed by Jeffrey l. Snow on behalf of all attorneys of record who are associated with Customer No. 022832.

All attorneys/agents associated with the Customer No. 022832 have been withdrawn.

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

All future correspondence will be directed to the first named inventor James H. Howell at the address indicated below.

There is on outstanding Office action at this time.

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

David Bucci
Petitions Examiner
Office of Petitions

cc: James H. Lowell
18 Pine Grove Street
Needham, MA 02494

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/457,286	06/09/2003	James H. Lowell	L0021/7000

CONFIRMATION NO. 7273

OC000000020279626

OC000000020279626

022832
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
STATE STREET FINANCIAL CENTER
ONE LINCOLN STREET
BOSTON, MA 02111-2950

Date Mailed: 09/01/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/25/2006.

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

J. Williams

TERRI S WILLIAMS
OP (571) 272-2991

FORMER ATTORNEY/AGENT COPY

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& SCHIFFMILLER, P.C.
489 FIFTH AVENUE
NEW YORK, NY 10017

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OFFICE OF PETITIONS

In re Application of :
Benderly : DECISION ON PETITION
Application No. 10/457,303 :
Filed: June 9, 2003 :
Docket No.: BENDERLY :

This is a decision on the petition to revive under 37 CFR 1. 181, filed July 18, 2005.

This application was held abandoned August 22, 2004 for failure to timely submit a proper reply to the non-final Office action mailed May 21, 2004. Notice of Abandonment was mailed July 1, 2005.

Petitioner asserts that a response to the non-final Office action was timely submitted on August 20, 2004 and has submitted as proof of USPTO receipt of the reply a return postcard dated stamped August 20, 2004.

The original amendment submitted august 20, 2004 has not been located. However, in view of the evidence presented, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

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

The application file is being forwarded to Technology Center 3700 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Mail Date: 04/21/2010

Applicant	: Balaji S. Thenthiruperai	: DECISION ON REQUEST FOR
Patent Number	: 7657652	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/457,308	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1196** 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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PRAXAIR, INC.
LAW DEPARTMENT - M1 557
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DANBURY, CT 06810-5113

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OFFICE OF PETITIONS

In re Application of

Lombardo, et al. :

Application No. 10/457,316 :

: DECISION ON PETITION

Filed: June 9, 2003

:

Attorney Docket No. D-21,284-1

This is a decision on the petition under 37 CFR 1.137(b), filed January 23, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 28, 2006, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on June 29, 2006. A Notice of Abandonment was mailed on January 17, 2007.

The amendment filed January 22, 2007, is noted.

The application is being forwarded to Technology Center 3700, GAU 3723 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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MINNEAPOLIS, MN 55440-1022

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OFFICE OF PETITIONS

In re Application of :
Montserrat Vilalta, et al. :
Application No. 10/457,319 : ON PETITION
Filed: June 9, 2003 :
Atty Docket No.: 02894-590001/06505-PT10/H :
:

This is a decision on the petition, filed January 26, 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 2, 2005, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

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

The application is being referred to Technology Center AU 3751 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: FISH & RICHARSON, P.C.
225 FRANKLIN STREET
BOSTON, MA 02110

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FISH & RICHARDSON PC
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MINNEAPOLIS, MN 55440-1022

Mail Date: 04/26/2010

Applicant	: Douglas J. Holmi	: DECISION ON REQUEST FOR
Patent Number	: 7583806	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/457,338	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1161** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Application of :
Makoto Takeuchi :
Application No. 10/457,371 :
Filed: June 10, 2003 : DECISION ON PETITION
Attorney Docket Number: 8009-1013 : UNDER 37 C.F.R. §1.137(B)
Title: HEAD DRIVING APPARATUS FOR DISK APPARATUS :

This is a decision on the petition filed August 21, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R §1.113 in a timely manner to the final Office action mailed April 29, 2005, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 C.F.R §1.136(a) were obtained, and no response was received. Accordingly, the above-identified application became abandoned on July 30, 2005. A notice of abandonment was mailed on August 9, 2006.

1 A grantable petition pursuant to 37 C.F.R §1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

With the present petition, Petitioner has submitted the petition fee and the proper statement of unintentional delay. Petitioner has further included a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, the associated fee, and an amendment.

No terminal disclaimer is required. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). The concurrently submitted amendment shall serve as the required submission.

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

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the RCE can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[2]. 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

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 reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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OFFICE OF PETITIONS

ROBERT N. O'BRIEN
2614 QUEENSWOOD DRIVE
VICTORIA BC V8N 1X5, CA
CANADA

In re Patent No. 6,836,098	:	
Issue Date: December 28, 2004	:	
Application No. 10/457,377	:	DECISION ON PETITION
Filed: June 10, 2003	:	UNDER 37 CFR 1.378(b)
Attorney Docket No.	:	
Patentee(s): Robert N. O'Brien	:	

This is a decision on the petition under 37 CFR 1.378(b), filed September 18, 2009, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

The patent issued December 28, 2004. The first maintenance fee could have been paid from December 28, 2007, through June 28, 2008, or with a $ 65 surcharge during the period from June 29, 2008 through December 28, 2008. Accordingly, the patent expired at midnight December 28, 2008, for failure to timely submit, the (first) 3 ½ year maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks items (1) and (3) above.

With respect to item 1:

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

Petitioner states that the delay in payment of the 3 ½ year maintenance fee was unavoidable due to Practitioners' mental infirmities.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses the identical language, i.e. "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)). Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, petitioner must show that hs was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due to his practitioner's medical conditions until the petition was filed.

In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were emplaced by petitioner or anyone else. In the absence of a showing that petitioner or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra. Put otherwise, the issues of petitioner's health and financial problems are immaterial in the absence of a showing that these, and not the lack of any steps in place to pay the fee, caused or contributed to the delay.

As to the health problems, petitioner should note that under the circumstances of this case, he will have to provide documents from licensed health care providers, demonstrating the nature

and extent of petitioner's incapacitation, in such a manner that petitioner was, from the date of expiry until the filing of the petition on September 25, 2009, "unavoidably" prevented from taking any earlier action with respect to this patent. Additionally, petitioner must state how he manages to conduct his daily personal and business affairs, including scheduling and settlement of short and long term debts and business obligations, bills, rent or mortgage payments, income taxes etc., during the time in question. Petitioner must demonstrate that his financial and health problems were such as to cause the payment of the maintenance fee to have been unavoidably delayed.

With respect to item 3:

A review of the application reveals that the petitioner supplied part of the surcharge for filing a petition under the provisions of 37 CFR 1.378(b) received September 18, 2009. The surcharge required 37 CFR 1.20(i)(1) of $700 and petitioner only paid $65. An additional $635 is required to meet the fee requirements of the petition. If the petitioner intends to submit a renewed petition the fee set forth under 37 CFR 1.16(f) the required fee of $635 must be submitted along with the renewed petition.

ALTERNATIVE VENUE

Petitioner should also note that since the maintenance fee was proffered within 24 months of the date of expiration date of the patent, he has an alternate remedy under the unintentional provisions of 37 CFR 1.378(c) which does not require a showing of the delay in timely paying the maintenance fee in order to reinstate the patent. The $700 already submitted would be applied to the $1,640 fee owed under 37 CFR 1.378(c), leaving a balance due of $940.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. **No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f).** The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

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

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

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

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

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :
Khein-Seng Pua, et. al. :
Application No. 10/457,390 : DECISION ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. 23384-US-PA :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 19, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to respond to the non-final Office action mailed January 14, 2005. A Notice of Abandonment was mailed on July 27, 2005.

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

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

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (over 2 years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment after midnight on April 14, 2005. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as the Law Firm of Birch, Stewart, Kolasch & Birch, LLP (Customer No. 2292) was counsels of record at the time of abandonment, an explanation as to why this application became abandoned while it was under their control and what efforts was made to further reply of itself and with whom this matter was discussed outside of the Law Office. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from the responsible person(s) and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 2 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons and the responsible person(s) at the Law Firm of Birch, Stewart, Kolasch & Birch, LLP (Customer No. 2292) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or

"unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any 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) is 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.

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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 W. SAJEWYCZ
GOWLING LAFLEUR HENDERSON LLP
COMMERCE COURT WEST, STE. 4900
TORONTO, ONTARIO, M5L 1J3
CANADA

COPY MAILED

JUL 13 2005

OFFICE OF PETITIONS

In re Application of :
Narayan Raghunathan :
Application No. 10/457,398 :
Filed: June 10, 2003 :
Attorney Docket No. T8467466US

DECISION ON PETITIONS
UNDER 37 CFR 1.78(a)(3) AND
UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 19, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment to the specification.

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 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 119(e) is accepted as being unintentionally delayed.

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

entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

The Associate Power of Attorney practice was eliminated on June 25, 2004. See Revision of Power of Attorney and Assignment Practice, 69 Fed Reg. 29865 (May 26, 2004); 1283 Off. Gaz. 148 (June 22, 2004). Although the paper has been placed in the file, the names of the patent practitioner listed on the Associate Power of Attorney have not been made of record.

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

The matter is being referred to Technology Center AU 3727 for appropriate action on the amendment submitted February 10, 2005, including consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional application, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

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

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SHIH-HUA YEH
P.O. BOX NO. 6-57
JUNGHE, TAIPEI 235
TAIWAN

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OFFICE OF PETITIONS

In re Application of :
Shih-Hua-Yeh :
Application No. 10/457,412 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. N/A :

This is a decision on the petition under 37 CFR 1.181, filed September 9, 2005, to withdraw the holding of abandonment.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed July 2, 2004. Accordingly, this application became abandoned on October 3, 2004. A Notice of Abandonment was mailed on February 7, 2005.

Petitioner asserts the Office action was not received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

The required statements and docket records have been submitted. As such, the petition is granted.

The file is being forwarded to Technology Center 3700 for re-mailing of the July 2, 2004 Office action with a new period for response.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

James R. Thein
Suite 105
2231 Crystal Drive
Arlington, VA 22202

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MAR 2 4 2005

OFFICE OF PETITIONS

In re Application of :
Ralph B. Conlee :
Application No. 10/457,414 :
Filed: June 10, 2003 : ON PETITION
Title of Invention: :
RAISED LAP-FITTED WORK-TOP :

This is a decision on the Petition to Withdraw Notice of Abandonment, filed January 25, 2005. The petition is properly treated under 37 CFR 1.181.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 14, 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 September 15, 2004. A Notice of Abandonment was mailed on January 7, 2005.

Applicant's Assertion

Applicant asserts that a timely reply to the non-final Office action was filed on October 19, 2004. In support of this assertion, Applicant provides, *inter alia*, copies of an Amendment; petition for extension of time; Transmittal Form and a Fee Transmittal Form n authorization to charge deposit account 50-0398 the extension of time fee of $215. The Transmittal Form contains a Certificate of Mailing dated October 19, 2004. Applicant avers that, due to a scrivener's error, the application number was entered on the Cover Letter as application serial number 10/457,444, instead of 10/457,414.

A review of Application serial number 10/457,444, reveals that an Amendment was received in the Office and placed in that application on October 19, 2004. The same Amendment has been filed in this petition. Apparently the Amendment was filed in

this Office on October 19, 2004, and due to errors on the part of applicant and this Office, was inadvertently placed in application serial number 10/457,444. Accordingly, the petition is granted.

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

No petition fee has been charged and none is due. The extension of time fee, charged to deposit account 50-0398 in application no. 10/457,444, has been removed and charged to application no. 10/457,414.

The application file is being referred to Technology Center Art Unit 3637 for continued processing in due course.

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

Derek L. Woods
Attorney/Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAR 25 2005

James R. Thein
Suite 105
2231 Crystal Drive
Arlington, VA 22202

MAILED

MAR 25 2005

OFFICE OF THE DIRECTOR
TC 3600

In re Application of :
Ralph B. Conlee :
Application No. 10/457,414 :
Filed: June 10, 2003 :
For: RAISED LAP-FITTED WORK-TOP :

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicants Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office on January 25, 2005.

The petition is **DISMISSED**.

A review of the file record reveals that an Office action was mailed to applicants on June 14, 2003. Since the Office never received a reply to the June 14, 2003 Office action the application was properly abandoned on January 7, 2005.

Petitioner contends that the response was filed on October 18, 2004, but incorrectly had the wrong serial number associated with the response.

While it does appear that the response filed by applicant on October 18, 2004 could have been matched to the correct file, there is no indication as to when the office actually received the response dated October 18, 2004.

Applicant needs to provide a proper showing of actual receipt of the October 18, 2004 response by the Office. For example, a dated post card receipt.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Correspondence with respect to a Petition to Withdraw the Holding of Abandonment should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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

KJD/jwk: 3/9/05

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Katsuyuki Yokoi, et al.
Application No. 10/457,465
Filed: June 10, 2003
Attorney Docket No.: 116217

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 18, 2005, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

The application is being referred to Technology Center AU 2852 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

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

In re Application of :
Katsuyuki Yokoi et al :
Application No. 10/457,465 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. 116217 :

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 November 18, 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 2852 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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TECHNOLOGY CENTER 3600

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

ROTHWELL, FIGG, ERNST, & MANBECK, P.C.
1425 K STREET N.W.
SUITE 800
WASHINGTON, DC 20005

In re application of : **DECISION ON PETITION**
Tomas Bok et al. : **TO MAKE SPECIAL**
Application No. 10/457,479 : **(ACCELERATED**
Filed: June 10, 2003 : **EXAMINATION)**
For: SYSTEM, METHOD, AND COMPUTER PROGRAM PRODUCT FOR EXECUTING A BUY OR SELL ORDER

This is in response to the petition filed on August 24, 2006 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

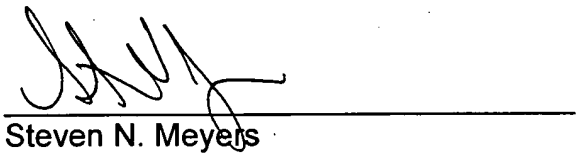
The petition fails to adequately meet requirements (E) above. Regarding item (E), the petition does not include a detailed discussion of how the claimed subject matter is patentable over each of the references deemed most closely related to the subject matter encompassed by the claims. Since any reference submitted is seen as a "reference deemed most closely related to the subject matter encompasses by the claims" all submitted references must be discussed in detail.

For the above stated reasons, the petition is **DISMISSED**.

Petitioner is given one more opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.



Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(571) 272-6611

KJD/slb: 12/12/06

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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ROTHWELL, FIGG, ERNST, & MANBECK, P.C.
1425 K STREET N.W.
SUITE 800
WASHINGTON, DC 20005

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APR 0 4 2007

TECHNOLOGY CENTER 3600

In re application of : **DECISION ON PETITION**
Tomas Bok et al. : **TO MAKE SPECIAL**
Application No. 10/457,479 : **(ACCELERATED**
Filed: June 10, 2003 : **EXAMINATION)**
For: SYSTEM, METHOD, AND COMPUTER PROGRAM PRODUCT FOR EXECUTING A BUY OR SELL ORDER

This is in response to the petition filed on February 21, 2007 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

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

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

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

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

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(571) 272-6619

RAR/slb: 03/22/07

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

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JUN 02 2005

OFFICE OF PETITIONS

In re Application of :
Tatsuya Takai et al :
Application No. 10/457,494 :
Filed: June 9, 2003 :
Attorney Docket No. 1018.1172101 :

ON PETITION

This is a decision on the petition, filed May 25, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on April 25, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2833 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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OFFICE OF PETITIONS

In re Application of :
Howard Gaines Hooper III, et. al. :
Application No. 10/457,497 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 100202104-1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 10, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

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

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

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Final Office Action of August 13, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted on July 10, 2008 does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal Form (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

Further, Petitioner should note that the Examiner has responded to the Amendment after Final with an Advisory Action Form (copy enclosed).

There is no indication that the person signing the 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 Scott A. Lund 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. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must 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 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 Denise Williams at (571) 272-8930.

Brian Brown
Petitions Examiner
Office of Petitions

Enclosure: Examiner's Advisory Action Form

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/457,497	Applicant(s) HOOPER ET AL.	
	Examiner Neil R. McLean	Art Unit 2625	

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

THE REPLY FILED 10 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner has read the applicant's argument dated 7/10/2008. With respect to the basis of the Final Action by Examiner regarding a common assignee. The Examiner would point out that applicant failed to raise this issue in a timely manner and that Attorney Nathan Reese indicated to the Examiner on June 5, 2008 that the case had been abandoned.

UNITED STATES PATENT AND TRADEMARK OFFICE

11-3-06

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

Patent No. : 7,111,259
Inventor(s) : Albert E. Casavant
Issued : September 19, 2006
Title : CROSSTALK MITTIGATION METHOD AND SYSTEM
Docket No. :

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of 37 CFR 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A request for a patent to be corrected to state the name of the assignee must:

A. state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;
B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and
C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.
See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.
Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

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

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

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

Eva James
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) **308-9390 ext. 124** or Ext. 102

Howard L. Bernstein
Sughrue Mion, PLLC
2100 Pennsylvania Avenue, N.W.
Suite 800
Washington, DC 20037

ej

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JUL 2 0 2006

OFFICE OF PETITIONS

CHARLES E. BAXLEY, ESQ.
90 JOHN STREET
THIRD FLOOR
NEW YORK NY 10038

In re Application of
TSAI
Application No.: 10/457,577
Attorney Docket No.: 048937/309933

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

This is a decision on the petition under 37 CFR 1.137(b), filed May 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 non-final Office action mailed September 7, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, by operation of law, the above-identified application became abandoned at midnight on December 7, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of September 7, 2005 is accepted as having been unintentionally delayed.

The application is being referred to Technology Center AU 3676.

Telephone inquiries concerning this decision should be directed to the undersigned.

Cynthia M. Kratz
Petitions Attorney
(571) 272-3286

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JAHANGIR S. RASTEGAR
2 SIPALA COURT
EAST NORTHPORT, NY 11731

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SEP 0 4 2009

OFFICE OF PETITIONS

In re Application of :
Jahangir S. Rastegar :
Application No. 10/457,584 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 10021 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 21, 2009, to revive the above-identified application.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Thomas Spinelli 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 o56632n whose behalf he acts. If, Mr. Spinelli desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Spinelli, 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**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of May 18, 2009 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on July 19, 2009. See MPEP 1214.06.

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 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 a Request for Continued Examination (RCE), including the submission required by 37 CFR 1.114 and fee of $405; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

This application is being referred to Technology Center AU 2622 for processing of the RCE and for appropriate action by the Examiner in the normal course of business in accordance with 37 CFR 1.114

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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OVERLAND PARK, KS 66251-2100

Mail Date: 04/21/2010

Applicant	: Bryce A. Jones	: DECISION ON REQUEST FOR
Patent Number	: 7603128	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/457,603	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **802** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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BENJAMIN AARON ADLER, PH.D., J.D.
ADLER & ASSOCIATES
8011 CANDLE LANE
HOUSTON TX 77071

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JAN 1 6 2004

OFFICE OF PETITIONS

In re Application of :
Drake et al. :
Application No. 10/457,604 : ON PETITION
Filed: 17 November, 2003 :
Attorney Docket No. D6128D2 :

This is a decision on the petition under 37 CFR 1.182, filed on 17 November, 2003, to change the order of the names of the inventors.

The petition is **granted**.

The Office is construing the copy of the declaration filed with the present petition as containing the desired order of inventor's names. Therefore, the order of the names of the inventors will be changed as follows:

1. Richard Drake
2. Trenton Hinds
3. Cesar Compadre
4. Barry Hurlburt
5. Tammy Rechtin

A corrected Filing Receipt is enclosed for petitioners' records.

This application is being forwarded to Technology Center 1600 for examination in due course.

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

D Wood

Douglas I. Wood
Petitions Attorney
Office of Petitions

Encl: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

J. SCOTT DENKO
ANDREWS & KURTH LLP
111 CONGRESS AVE., SUITE 1700
AUSTIN TX 78701

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OFFICE OF PETITIONS

In re Application of :
Partridge et al. : DECISION ON PETITION
Application No. 10/457,608 :
Filed: June 9, 2003 :
Atty Docket No. 254-094-CIP-3 :

This is a decision on the PETITION TO REVIVE ABANDONED APPLICATION UNDER 37 CFR 1.137(B) filed January 30, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed June 30, 2005. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). An amendment, made timely by an extension of time for response within the second month, was filed on November 2, 2005, but was deemed by the examiner not to place the application in condition for allowance (Advisory Action mailed November 30, 2005). No further reply timely filed and no further extension of time obtained, the application became abandoned effective December 1, 2005. The instant petition precedes the mailing of a courtesy Notice of Abandonment.

The petition includes the required reply, the required statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required.

The petition also included a petition for extension of time and extension fee of $1,020. As no extension of time is obtainable

outside of the maximum period for reply to the Office action (which ended December 30, 2005), this fee is being refunded to Deposit Account No. 50-3534, as authorized.

Technology Center AU 2822 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed May 19, 2006.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 2 2004

Office of the Director
Group 3600

Bohan, Mathers & Associates, LLC
P.O. Box 17707
Portland, ME 04112-8707

In re application of : **DECISION ON PETITION**
William Hagenzieker : **TO MAKE SPECIAL**
Application No. 10/457,615 : **(APPLICANT'S AGE)**
Filed: June 9, 2003 :
For: CARGO-TRANSFER APPARATUS AND METHOD

This is a decision on the petition submitted on February 23, 2004 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a statement from the applicant and a copy of applicant's birth certificate indicating he is at least 65 years of age.

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

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

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

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

KJD/vdb: 5/5/04

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAR 24 2006

OFFICE OF PETITIONS

In re Patent No. 6,913,950	:	
Issued: July 5, 2005	:	
Application No. 10/457,637	:	ON PETITION
Filed: June 9, 2003	:	
Attorney Docket No. 10921.0097USD1	:	

This is a decision on the petition under 37 CFR 1.182, filed September 30, 2005, requesting issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

A petition under 37 CFR 1.182 requires a petition fee of $400.00. Accordingly, $400 will be charged to petitioner's deposit account as authorized.

Any questions concerning this matter may be directed to Petitions Examiner Liana Chase at (571) 272-3206. Any questions concerning issuance of the duplicate Letters Patent should be directed to Kimberly Terrell at (703) 308-9250.

A copy of this decision is being forwarded to Publishing Division for issuance of a duplicate Letters Patent.

Liana Chase for
Frances Hicks
Petitions Examiner
Office of Petitions

cc: Kimberly Terrell, P/OPPD, South Tower 8C41 (FAX 703-746-4658)

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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NGUYEN & ASSOCIATES
16168 BLOSSOM HILL ROAD
LOS GATES, CA 95032

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JUN 15 2006

OFFICE OF PETITIONS

In re Application of
Lefan Zhong et al
Application No. 10/457,644
Filed: June 9, 2003
Attorney Docket No. MediaQ-012

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 13, 2006.

The petition 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 Frank Nguyen on behalf of all attorneys/agents of record.

All attorneys/agents of record have been withdrawn.

Applicants are 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) the intervening assignee of the entire interest. 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 applicants.

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

This application is being referred to Technology Center AU 2621 to await a reply to the final Office action mailed April 18, 2006.

David Bucci
Petitions Examiner
Office of Petitions

cc: LEFAN ZHONG
170 GILBERT STREET
SANTA CLARA, CA 95051

ANTHONY MURABITO, PARTNER
WAGNER MURABITO & HAQ
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE, CA 95113

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HAO & BARNES LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE CA 95113

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OFFICE OF PETITIONS

In re Application of :
Zhong, et al, :
Application No. 10/457,644 : DECISION
Filed: 9 June, 2003 :
Attorney Docket No. NVID-P000898 :

This is a decision on the renewed petition filed on 12 December, 2007, and considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

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

NOTES: Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

BACKGROUND

The record reflects that:

- Applicant, failed to reply timely and properly to the non-final Office action mailed on 5 October, 2006, with reply due absent an extension of time on or before 5 January, 2007;
- the application went abandoned after midnight 5 January, 2007;
- the Office mailed the Notice of Abandonment on 1 June, 2007;

- on 12 December, 2007, Petitioner filed the instant petition with, *inter alia*, an averment that prior counsel filed a request to withdraw on 13 March, 2006—unstated is that the request was granted by the Office and in the interim correspondence was directed to the Applicant because there was no Revocation/Power of Attorney submitted (with or without a Certificate under 37 C.F.R. §3.73(b)) and in the decision of 15 June, 2006, a copy of which was mailed to the first-named Applicant at the correspondence address of record and to Petitioner, all expressly were Noticed by the Office that the designation Petitioner as the correspondence address of record was improper in the absence of an express Revocation/Power of Attorney submitted (with a Certificate under 37 C.F.R. §3.73(b) if required to address the authority of the assignee);

- the Office action in question was not mailed until 5 October, 2006—almost four (4) months after that decision;

- nonetheless, Petitioner appears to have ignored the 15 June, 2006, decision, and in doing so, failed to file the Revocation/Power of Attorney (with a Certificate under 37 C.F.R. §3.73(b) until more than 17 months after the decision—on 23 November, 2007;

- Petitioner's averment appears without merit, fails to evidence diligence in the response, and so fails to satisfy the showing as provided in the guidance at the Commentary in MPEP §711.03(c).

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

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.[1]

STATUTES, REGULATIONS AND ANALYSIS

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

---

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

[2] 35 U.S.C. §133 provides:

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.[3] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4]

And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7] (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.

Petitioner appears not to have satisfied showing requirement herein as discussed in the BACKGROUND, above—to wit: Petitioner ignored the express language of the 15 June, 2006, petition decision mailed to him, and in doing so failed to keep current with the Office a proper correspondence address of record. Moreover, Petitioner clearly failed to satisfy the timeliness requirement of 37 C.F.R. §1.181.

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

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

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

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

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

CONCLUSION

Petitioner appears not to have satisfied the burdens herein, and the petition as considered under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (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 petition fee, a terminal disclaimer and fee where appropriate 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.)

Because Petitioner was not of record at the time the application went abandoned and cannot make the statement of unintentional delay, Petitioner should have the Applicant/Assignee (with a Certificate under 37 C.F.R. §3.73(b)) make the statement/showing of unintentional delay.

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

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

By FAX: IFW Formal Filings
(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[8]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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www.uspto.gov

NVIDIA C/O MURABITO,
HAO & BARNES LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE CA 95113

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OFFICE OF PETITIONS

In re Application of :
Zhong, et al, :
Application No. 10/457,644 : DECISION
Filed: 9 June, 2003 :
Attorney Docket No. NVID-P000898 :

This is a decision on the petition, filed on 14 April, 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 non-final Office action mailed on 5 October, 2006, with reply due absent an extension of time on or before 5 January, 2007;
- the application went abandoned after midnight 5 January, 2007;
- the Office mailed the Notice of Abandonment on 1 June, 2007;

- on 12 December, 2007, Petitioner filed the original petition under 37 C.F.R. §1.181 requesting withdrawal of the holding of abandonment with, *inter alia*, an averment that prior counsel filed a request to withdraw on 13 March, 2006—unstated is that the request was granted by the Office and in the interim correspondence was directed to the Applicant because there was no Revocation/Power of Attorney submitted (with or without a Certificate under 37 C.F.R. §3.73(b)) and in the decision of 15 June, 2006, a copy of which was mailed to the first-named Applicant at the correspondence address of record and to Petitioner, all expressly were Noticed by the Office that the designation of Petitioner as the correspondence address of record was improper in the absence of an express Revocation/Power of Attorney submitted (with a Certificate under 37 C.F.R. §3.73(b) if required to address the authority of the assignee):

  —the Office action in question was not mailed until 5 October, 2006—almost four (4) months after that decision;

  —nonetheless, Petitioner appears to have ignored the 15 June, 2006, decision, and in doing so, failed to file the Revocation/Power of Attorney (with a Certificate under 37 C.F.R. §3.73(b) until more than 17 months after the decision—on 23 November, 2007;

  —Petitioner's averment appeared without merit, failed to evidence diligence in the response, and so failed to satisfy the showing as provided in the guidance at the Commentary in MPEP §711.03(c)—the petition was dismissed on 27 March, 2008;

- on 18 April, 2008, Petitioner filed the instant petition with fee, a reply in the form of and amendment and made the statement of unintentional delay—it is noted that the person making the statement may not have been the person in whose control the application went abandoned and the statement is being construed as meaning that Petitioner has made the requisite inquiry to satisfy himself as to the accuracy of the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.[1]

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

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

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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).

underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3] The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5]

And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

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

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

[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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

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

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

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

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 2621 for further processing in due course.

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

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[8]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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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 :
Alexander I. Nadezhdinskii et al :
Application No. 10/457,646 : DECISION GRANTING PETITION
Filed: June 9, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. AAQUI.0121 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 15, 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 reply to the Final Rejection of June 8, 2006, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center Au 2884.

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

Donald H. Choi
3443 North Randolph Street
Arlington VA 22207

In re Application of

Donald H. Choi

Application No. 10/457,666

Filed: June 9, 2003

Attorney Docket No.

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OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed November 8, 2007, and in duplicate on May 20, 2008. This is also a decision on the petition under 37 CFR 1.137(a) filed May 20, 2008.

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

The petition under 37 CFR 1.137(a) is dismissed as **MOOT**.

This application was held abandoned on July 20, 2007, after it was believed that no response was received to the final Office action mailed April 19, 2007. The notice allowed a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A Notice of Abandonment was mailed on October 31, 2007, indicating that a reply to the final Office action was not received.

Petitioner states that an amendment responsive to the final Office action was filed on July 16, 2007. A review of the application file reveals that an amendment was filed on July 16, 2007. Based on the aforementioned, it appears that the application was improperly held abandoned as a response was received prior to expiration of the period for reply. The holding of abandonment is withdrawn, accordingly.

As the application is being returned to a pending status pursuant to 37 CFR 1.181, the petition under 37 CFR 1.137(a) is dismissed as presenting a moot issue. The amount of $225.00 remitted for the petition fee will be refunded, in due course.

The application file is being directed to Technology Center, GAU 3749 for further processing.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JJGJR.: 07-06

Paper No: __

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13 FOREST DRIVE
WARREN NJ 07059

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JUL 10 2006

OFFICE OF PETITIONS

In re Application of :
Valasopoulos :
Application No.: 10/457,667 :
Filing Date: 9 June, 2003 :
Attorney Docket No. Ecc204T3 :

DECISION

This is a decision on the petition filed on 9 May, 2006, as a request to withdraw the holding of abandonment considered under 37 C.F.R. §1.181.

For the reasons set forth below the petition as considered under 37 C.F.R. §1.181 is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

(If Petitioner is unable to present even a satisfactory showing to support a petition under 37 C.F.R. §1.137(a), and Petitioner's only alternative will be to file a petition under 37 C.F.R. §1.137(b).)

(2) Thereafter, there will be no further reconsideration of this matter.[1]

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the final Office action mailed on 15 September, 2005, with reply due absent extension of time on or before 15 December, 2005;

- the instant application went abandoned after midnight 15 December, 2005;

- the Office mailed the Notice of Abandonment on 29 March, 2006;

- on 9 May, 2006, Petitioner filed the instant petition to withdraw the holding of abandonment, and averring non-receipt of a miscellaneous Office action mailed on 27 or 28 January, 2006 (copies enclosed)–an improvident plea in that the Office action to which Petitioner failed to reply properly and timely was the final Office action of 15 September, 2005–as expressly set forth in the Notice of Abandonment–and to which Petitioner replied with only a request and fee for continued examination but failed to file a submission as required under the provisions of 37 C.F.R. §1.114, moreover, Petitioner failed to state expressly that his search of, *inter alia*, file and file jacket evidenced no Office action in question;

- 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 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

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[1] 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.

duty to disclose.[2]

STATUTES, REGULATIONS AND ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

[3] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[8]))

Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[9]

Further, 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

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[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).

> 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.)
>
> * * *

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.

CONCLUSION

Because Petitioner has not satisfied the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 is **dismissed**.

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
10/457,667	06/09/2003	Christos Valasopoulos	Ecc204T3	7404

7590 01/27/2006

HORST KASPER
13 FOREST DRIVE
WARREN, NJ 07059

EXAMINER	
WRIGHT, DIRK	

ART UNIT	PAPER NUMBER
3681	

DATE MAILED: 01/27/2006

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

The request for deferral/suspension of action under 37 CFR 1.103 has been approved.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/457,667	06/09/2003	Christos Valasopoulos	Ecc204T3	7404

7590 02/28/2006

HORST KASPER
13 FOREST DRIVE
WARREN, NJ 07059

EXAMINER	
WRIGHT, DIRK	

ART UNIT	PAPER NUMBER
3681	

DATE MAILED: 02/28/2006

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

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10/457667			

EXAMINER	
ART UNIT	PAPER

DATE MAILED:

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

Commissioner for Patents

This letter is to inform you that the notice approving the request for deferral/suspension of action under 37 CFR 1.103 dated 1/27/2006 was sent in error and is hereby vacated. The notice is being vacated because the Request for Continued Examiner (RCE) is considered improper. The RCE is considered improper because it was not accompanied by a submission as required under 37 CFR 1.53(d). The above application will be returned to a final rejection status until appropriate action is taken. If there are any questions concerning this matter please call me at (571) 272-6601.

TOI JOHNSON
SUPERVISORY LEGAL INSTRUMENT EXAMINER
TECHNOLOGY CENTER 3600

PTO-90C (Rev.04-03)

10/457667

United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 12/20/05 is improper for reason(s) indicated below:

☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).

☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).

☐ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.

☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).

☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.

☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

☑ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

T. Johnson, Examining Group 3600.

(703) 30____-_____.

FORM PTO-2051 (Rev. 3/2001)

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HORST KASPER
13 FOREST DRIVE
WARREN NJ 07059

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MAY 21 2007

OFFICE OF PETITIONS

In re Application of
Valasopoulos
Application No. 10/457,667
Filed: June 9, 2003
Attorney Docket: Ecc204T3

Title: Components System for Engaging A Standard Differential

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 28, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to file a proper reply to the final Office Action of September 15, 2005. The final Office Action set a three (3) month shortened statutory period for reply. An improper request for continued examination was filed on December 20, 2005. A Notice of Improper Request for RCE was mailed on February 28, 2006. An untimely amendment was submitted on March 22, 2006. A Notice of Abandonment was mailed on March 29, 2006. A petition filed under 37 CFR 1.181 was dismissed on July 10, 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 amendment will be forwarded to Technology Center 3600 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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

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MAY 19 2008

OFFICE OF PETITIONS

In re Application of :
Raman Chandrasekar, et al. :
Application No. 10/457,686 : DECISION DISMISSING PETITION
Filed: June 9, 2003 : UNDER 37 CFR 1.313(a)
Attorney Docket No. MSFT-2192/14357.1 :

This is a decision on the petition under 37 CFR 1.313(a), filed May 9, 2008, to withdraw the above-identified application from issue.

The petition is **DISMISSED AS MOOT**.

A review of the record discloses that petitioner submitted an issue fee payment of $1400 on November 5, 2007, in response to the Notice of Allowance and Issue Fee Due mailed August 27, 2007. However, effective September 30, 2007, the issue fee was increased to $1440. Since any fee amount paid on or after September 30, 2007 must be paid at the new amount, the issue fee payment was deficient by $40. It is noted that applicant did not provide an authorization to charge any fee deficiencies to a deposit account. Consequently the application became abandoned by operation of law on November 28, 2007.

Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional. A petition under 37 CFR 1.137(a) or (b) cannot be unintentionally delayed and therefore should be filed promptly. If petitioner chooses not to file a petition to revive this application, petitioner may simply request that the filing fees of the Improper RCE and Amendment on May 9, 2008 be refunded.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed;[1] (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable;

[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.

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

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

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**.

In view of the above, the petition to withdraw from issue must be dismissed as involving a moot issue and the application is abandoned.

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

April M. Wise
Petitions Examiner
Office of Petitions

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

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SEP 19 2008

OFFICE OF PETITIONS

In re Application of	:	
Chandrasekar et al.	:	
Application No. 10/457,686	:	DECISION ON PETITION
Filed: June 9, 2003	:	
Attorney Docket No. MSFT-2192/142357.1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 29, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before November 23, 2007, as required by the Notice of Allowance and Fee(s) Due mailed August 22, 2007. Accordingly, the date of abandonment of this application is November 24, 2007. A Notice of Abandonment was mailed May 23, 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 $40.00 issue fee deficiency (charged to petitioner's deposit account as authorized) and an Request for Continued Examination (RCE) (previously filed on May 9, 2008); (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay.

Petitioner is advised that, once submitted, the issue fee 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.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2164 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted May 9, 2008 in accordance with 37 CFR 1.114.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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

NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON DC 20375-5320

MAILED

APR 14 2010

OFFICE OF PETITIONS

In re Application of	:	
Rife et al.	:	
Application No. 10/457,705	:	DECISION ON PETITION
Filed: June 10, 2003	:	
Attorney Docket No. N.C 84,529	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 18, 2010, 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 19, 2010, as required by the Notice of Allowance and Fee(s) Due mailed October 19, 2009. Accordingly, the date of abandonment of this application is January 20, 2010. A Notice of Abandonment was mailed February 3, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and publication fee of $300.00; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

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

Joan Olszewski
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

NIKOLAI & MERSEREAU, P.A.
900 SECOND AVENUE SOUTH
SUITE 820
MINNEAPOLIS, MN 55402

FAX RECEIVED

MAY 26 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Wu-Ling Chu :
Application No. 10/457,712 :
Filed: June 10, 2003 :
Attorney Docket No. PUSA050158 :
(20050510.ORI)

This is a decision on the petition under 37 CFR 1.137(b), filed May 9, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed April 22, 2004. Accordingly, this application became abandoned on July 23, 2004. A Notice of Abandonment was mailed on December 3, 2004.

The file is being forwarded to Technology Center 3700 for review of the amendment, filed May 9, 2005, *in due course*.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JUL 13 2005

PARGHI, KAUMIL H.
1019 E. LEMON ST.
105
TEMPE AZ 85281

In re Application of
Kaumil H. Parghi
Serial No.: 10/457,714
Filed: June 9, 2003
Attorney Docket No.:

: PETITION TO MAKE SPECIAL

This is in response to the petition filed June 9, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d). The delay in acting on this petition is regretted.

A petition to make special may be granted on an application contributing to the detection of HIV, AIDS or cancer as noted in M.P.E.P. 708.02:

> In view of the importance of developing treatments and cures for HIV/AIDS and cancer 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 HIV/AIDS and cancer.
> Applicants who desire that an application relating to HIV/AIDS or cancer be made special should file a petition and the **fee under 37 CFR 1.17(h)** requesting the U.S. Patent and Trademark Office to make the application special. The petition for special status should be accompanied by a statement explaining how the invention contributes to the diagnosis, treatment or prevention of HIV/AIDS or cancer.

Applicant has not filed the petition fee required.

Applicant also requests special status under Environmental Quality which is defined as follows:

> The U.S. Patent and Trademark Office will accord "special" status to all patent applications for inventions which materially enhance the quality of the environment of mankind by contributing to the restoration or maintenance of the basic life-sustaining natural elements, i.e.,air, water, and soil.
> All applicants desiring to participate in this program should petition that their applications be accorded "special" status. Such petitions should be accompanied by statements under 37 CFR 1.102 by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the inventions contribute to the restoration or maintenance of one of these life-sustaining elements. No fee is required for such a petition. See 37 CFR 1.102(c).

Applicant's alleged cure for cancer does not qualify under environmental quality s it does not contribute to the maintenance or restoration of basic life sustaining element, - air, water, soil.

Applicant has not satisfied the provisions set forth in M.P.E.P. 708.02, X or V. Therefor the petition is **DENIED**.

The application been acted on recently.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission to the Office general facsimile number, 571-273-8300.

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

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/457,734	KOPRESKI ET AL.	
	Examiner	Art Unit	
	FRANK W. LU	1634	

ISSUE CLASSIFICATION

ORIGINAL			CROSS REFERENCE(S)						
CLASS	SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)						
435	91.2	435	6	91.1					
INTERNATIONAL CLASSIFICATION		536	23.1	24.3	24.33	25.3			
C12P 19/34									
C12Q 1/68									
C07H 21/02									
C07H 21/04									
C07H 21/00									

(Assistant Examiner) (Date)	/Frank W Lu/ 5/10/2010 (Primary Examiner) (Date)	Total Claims Allowed: 6	
(Legal Instruments Examiner) (Date)		O.G. Print Claim(s): 1	O.G. Print Fig.: None

☐ Claims renumbered in the same order as presented by applicant ☒ CPA ☒ T.D. ☐ R.1.47

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	1		31		61		91		121		151		181
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	~~30~~		60		90		120		150		180		210

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

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APR 12 2005

OFFICE OF PETITIONS

In re Application of :
Wallace Neil Hauck et al :
Application No. 10/457,757 : DECISION GRANTING PETITION
Filed: June 9, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 020489-001820US :

This is a decision on the petition under 37 CFR 1.137(b), filed January 31, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before November 23, 2004. A Notice of Abandonment was mailed on January 10, 2005.

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

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue fee payment; (2) the petition fee; and (3) an adequate statement of unintentional delay have been received. Accordingly, the reply to the Notice of August 23, 2004 is accepted as having been unintentionally delayed.

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

The matter is being referred to Publishing Division.

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

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EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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APR 12 2005

OFFICE OF PETITIONS

In re Application of :
Hauck et al. :
Application No. 10/457,757 : ON PETITION
Filed: 9 June, 2003 :
Att'y Docket No. 020489-001820US :

This is a decision on the petition under 1.137(b),[1] filed on 31 January, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 24 November, 2004, for failure to timely submit the issue fee as required by the Notice of Allowance and Issue Fee Due mailed on 23 September, 2004,

---

[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 statutory period for reply. Although an Issue Fee transmittal form was filed on 9 September, 2004 (certificate of mailing date 27 August, 2004), no issue fee payment was included with the transmittal form. Notice of Abandonment was mailed on 10 January, 2005.

The application file is being forwarded to Publishing Division for processing into a patent.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Christopher G. Frank
Nawrocki, Rooney & Sivertson, P.A.
Broadway Place East, Suite 401
3433 Broadway Street Northeast
Minneapolis, MN 55413

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FEB 2 2 2007

OFFICE OF PETITIONS

In re Application of

Perusse, et al.

Application No. 10/457,771

Filed: June 9, 2003

Attorney Docket No. 81013/101/102

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 11, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 8, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the statutory period. Accordingly, the application became abandoned on May 9, 2006. A Notice of Abandonment was mailed on August 15, 2006.

The amendment filed September 11, 2006, is noted and made of record.

The request for extension of time within the third month, filed September 11, 2006, is noted but cannot be granted as the request was made outside the maximum statutory period for reply. The amount of $510.00 will be refunded, in due course.

The application is being forwarded to Technology Center 2600, GAU 2627 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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Alexandria, VA 22313-1450
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Neil A. DuChez
Renner, Otto, Boisselle & Sklar, LLP
1621 Euclid Avenue, 19th Floor
Cleveland OH 44115

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NOV 21 2006

OFFICE OF PETITIONS

In re Application of :
Keith L. Truog, et al. :
Application No. 10/457,791 : DECISION GRANTING PETITION
Filed: June 9, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. AVERP3592US :

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 6, 2006 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 1772 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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MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
2ND FLOOR
WESTFIELD NJ 07090

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APR 27 2007

OFFICE OF PETITIONS

In re Application of :
James Robert Soderborg et al. :
Application No. 10/457,792 : DECISION ON PETITION
Filed: June 9, 2003 : TO WITHDRAW
Attorney Docket No. 1012/1 : 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 November 7, 2006.

The request is **NOT APPROVED**.

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

The request cannot be approved because 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: **Peter Odintsov**
Peter James SBST, Inc.
303 Philip Dr., #305
Daly City, CA 94015

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OFFICE OF PETITIONS

Mayer & Williams PC
251 North Avenue West
2nd Floor
Westfield, NJ 07090

In re Application of :

James Robert Soderborg et al. :
Application No. 10/457,792 : DECISION ON PETITION
Filed: June 9 2003 : TO WITHDRAW
Attorney Docket No. 1012/1 : 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 September 21, 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 Karin L. Williams 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.

The application became abandoned for failure to timely respond to the Office action mailed July 31, 2007.

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

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **James Robert Soderborg**
63 Fair Oaks
San Francisco, CA 94110

cc: **Peter Odintsov**
Peter James SBST, Inc.
303 Phillip Drive, #305
Daly City, CA 94015

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/457,792	06/09/2003	James Robert Soderborg	1012/1

CONFIRMATION NO. 9060

POWER OF ATTORNEY NOTICE

27774
MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
2ND FLOOR
WESTFIELD, NJ 07090

OC000000028085291

Date Mailed: 02/04/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/21/2007.

- 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 :
Eugene R. Cooper et al. :
Application No. 10/457,811 : DECISION ON APPLICATION
Filed: June 10, 2003 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **029318-0956** :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 filed February 10, 2010. Applicant requests that the determination of patent term adjustment be corrected from 83 to 221 days, in part on the basis that the Office will take in excess of three years to issue this patent and in light of the court decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

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

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

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

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

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).

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.

Anthony Knight
Director
Office of Petitions

[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.

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WASHINGTON, DC 20005

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FEB 25 2009

OFFICE OF PETITIONS

In re Application of :
Maurice Zauderer, et al. :
Application No.: 10/457,829 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No.: 1821.0040005/EKS/HCC :

This is a decision on the petition, filed February 24, 2009, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 9, 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 1643 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/SDB/

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 Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

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OFFICE OF PETITIONS

In re Application of :
ZAUDERER et al. : DECISION ON APPLICATION
Application No. 10/457,829 : FOR
Filed: 06/10/2003 : PATENT TERM ADJUSTMENT
Docket No. 1821.0040005/EKS/HCC :

This is in response to the "Request for Reconsideration of Patent Term Adjustment Determination Under 37 C.F.R. § 1.705(b)" filed December 8, 2008. Applicants request that the determination of patent term adjustment be corrected from 590 days to 1150 days. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

To the extent that 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, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within three years. See 37 CFR 1.703(b). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to the correctness of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, 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 pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

It is acknowledged that applicants are correct that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is noted that a Request for Continued Examination (RCE) was filed in this application on January 2, 2008.

With respect to the other basis for filing this paper, the request for reconsideration 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 determination at the time of the mailing of the notice of allowance is **739 days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 9, 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 590 days. Applicants timely filed the instant application for patent term adjustment.[1] Applicants state that the application is not subject to a terminal disclaimer.

Applicants dispute the period of adjustment under 37 CFR 1.702(a)(1) of 680 days associated with a "Miscellaneous Communication" mailed on June 21, 2006. Specifically, applicants state that:

> [] Applicants believe that 149 days of PTO delay should be added under 37 C.F.R. §1.702(a)(1). PAIR indicates that the PTO delay of 680 days is based on the mailing of a Miscellaneous Communication to Applicant on June 21, 2006, which was 680 days after fourteen months after the filing date of June 10, 2003. However, the Miscellaneous Communication to Applicant mailed on June 21, 2006 was a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosure, which is NOT a notification under 35 U.S.C. 132. Instead, the Notice mailed by the PTO on June 21, 2006 was a pre-exam processing notice which does not satisfy the requirements of 37 C.F.R. §1.702(a) and does not stop the clock for the delay starting fourteen months after the application was filed. *See also* M.P.E.P. §2731. The first notification under 35 U.S.C. 132 was the Restriction Requirement mailed by the PTO on November 17, 2006, which was 829 days after fourteen months after the filing date, thus Applicants believe that 149 days of PTA

[1] PALM Records indicate that the Issue Fee payment was received on December 9, 2008.

> should be added due to PTO delay under 37 C.F.R. §1.702(a)(1) and 35 U.S.C. §154(b)(1)(i).

Request dated 12/08/08, p. 2.

Applicants' argument is well taken. Pursuant to 37 CFR 1.703(a), the period of adjustment of patent term due to the failure of the Office to take action within a specified time frame is the sum of the following periods:

> (1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first[.]

A review of the record confirms that the "Miscellaneous Communication" mailed on June 21, 2006, was indeed a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures. However, a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures is not a notice issued as a result of an examination conducted pursuant to 35 U.S.C. 131, and thus, is not a notification under 35 U.S.C. 132. See MPEP 2731.

The record further reveals that a written Restriction Requirement was mailed on November 17, 2006. It is noted that a written Restriction Requirement is an action issued as a result of the examination conducted pursuant to 35 U.S.C. 131, and thus, is a notification under 35 U.S.C. 132. Therefore, under the circumstances of this application, the term of the patent should have been adjusted by 829 days (not 680 days), counting the number of days in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 37 U.S.C. 111(a), August 11, 2004, and ending on the date of the mailing of the Restriction Requirement, November 17, 2006. Accordingly, the period of adjustment of 680 days is being removed and a period of 829 days is being entered.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is **739 days** (829 days of Office delay - 90 days of applicant delay).

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

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

Kery A. Fries

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

Enclosure: Copy of updated PAIR screen

PALM INTRANET

Day : Friday
Date: 3/6/2009
Time: 11:52:11

PTA Calculations for Application: 10/457829			
Application Filing Date:	06/10/2003	PTO Delay (PTO):	680
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	90
Post-Issue Petitions:	0	Total PTA (days):	739
PTO Delay Adjustment:	149		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
99	03/06/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	149		
85	09/09/2008	MAIL NOTICE OF ALLOWANCE			
84	09/05/2008	ISSUE REVISION COMPLETED			
83	09/05/2008	DOCUMENT VERIFICATION			
82	09/05/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
81	09/05/2008	CASE DOCKETED TO EXAMINER IN GAU			
80	08/28/2008	EXAMINER'S AMENDMENT COMMUNICATION			
79	08/28/2008	NOTICE OF ALLOWABILITY			
75	06/04/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
71	07/17/2008	CASE DOCKETED TO EXAMINER IN GAU			
70	06/04/2008	REFERENCE CAPTURE ON IDS			
69	06/04/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		0	66
68	06/04/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
67	06/20/2008	DATE FORWARDED TO EXAMINER			
66	06/04/2008	RESPONSE AFTER NON-FINAL ACTION			
64	06/04/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
63	05/22/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
62	03/04/2008	MAIL NON-FINAL REJECTION			
61	02/26/2008	NON-FINAL REJECTION			
60	01/11/2008	DATE FORWARDED TO EXAMINER			
59	01/02/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			

58	01/11/2008	DATE FORWARDED TO EXAMINER			
57	01/02/2008	RCE- AF PROCESSED			
56	01/11/2008	DATE FORWARDED TO EXAMINER			
55	01/02/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		62	46
54	01/11/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
53	01/02/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
52	01/02/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
51	11/29/2007	MAIL ADVISORY ACTION (PTOL - 303)			
50	11/28/2007	ADVISORY ACTION (PTOL-303)			
48	11/14/2007	DATE FORWARDED TO EXAMINER			
47	11/01/2007	AMENDMENT AFTER FINAL REJECTION			
46	08/01/2007	MAIL FINAL REJECTION (PTOL - 326)			
45	07/31/2007	FINAL REJECTION			
44	06/13/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	06/13/2007	REFERENCE CAPTURE ON IDS			
42	06/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	40
41	06/21/2007	DATE FORWARDED TO EXAMINER			
40	06/13/2007	RESPONSE AFTER NON-FINAL ACTION		28	37
39	06/13/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	06/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	02/16/2007	MAIL NON-FINAL REJECTION			
36	02/15/2007	NON-FINAL REJECTION			
35	04/12/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	12/18/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33	01/04/2007	CASE DOCKETED TO EXAMINER IN GAU			
32	12/18/2006	REFERENCE CAPTURE ON IDS			
31.7	12/18/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	29
31	12/18/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	12/28/2006	DATE FORWARDED TO EXAMINER			

29	12/18/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
28	11/17/2006	MAIL RESTRICTION REQUIREMENT			
27	11/13/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
26	09/01/2006	DATE FORWARDED TO EXAMINER			
25	08/21/2006	RESPONSE AFTER NON-FINAL ACTION			
24	08/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	08/30/2006	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
22	06/21/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT	680		-1
21	06/16/2006	MISCELLANEOUS ACTION WITH SSP			
20	11/30/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
18	04/12/2005	REFERENCE CAPTURE ON IDS			
17.7	04/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	04/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/18/2004	WORKFLOW INCOMING AMENDMENT IFW			
15	11/03/2003	PRELIMINARY AMENDMENT			
14	05/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	11/12/2003	APPLICATION DISPATCHED FROM OIPE			
12	11/13/2003	APPLICATION IS NOW COMPLETE			
11	11/03/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
10	06/10/2003	CLAIM PRELIMINARY AMENDMENT			
9	11/03/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	09/02/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	06/30/2003	CLEARED BY OIPE CSR			
5	06/26/2003	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
4	06/26/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	06/26/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	06/10/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			

1	06/10/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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MAILED

MAY 10 2010

OFFICE OF PETITIONS

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Patent No. 7,563,882	:	DECISION ON REQUEST FOR
ZAUDERER et al.	:	RECONSIDERATION OF
Issue Date: July 21, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/457,829	:	NOTICE OF INTENT TO ISSUE
Filed: June 10, 2003	:	CERTIFICATE OF CORRECTION
Docket No. 1821.0040005/	:	
EKS/HCC	:	

This is a decision on the petition filed on August 27, 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 fifty (1150) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **one thousand thirty-two (1032) days**.

A review of the application history reveals that patentee should have been assessed delay under 37 CFR 1.704(c)(10) for the submission of the petition under 37 CFR 1.48 on December 8, 2008, the petition to withdraw from issue, Request for Continued Examination (RCE) and amendment on February 24, 2009, and the Information Disclosure Statement (IDS) on March 4, 2009.

37 CFR 1.704(c)(10) provides:

> Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

In this instance, it is undisputed that patentee submitted the petition under 37 CFR 1.48 on December 8, 2008, the petition to withdraw from issue, the RCE and amendment on February 24, 2009, and the IDS on March 4, 2009, after the mailing of the notice of allowance on September 9, 2008. It is noted that the petition to withdraw from issue, the RCE and amendment, and the IDS were submitted after the payment of the issue fee on December 8, 2008. Furthermore, a review of IDS submitted on March 4, 2009, reveals that it did not include a proper § 1.704(d) statement.[1] Thus, patentee failed to engage in reasonable efforts to conclude prosecution of the application pursuant to 37 CFR 1.704(c)(10).

Pursuant to 37 CFR 1.704(c)(10), patentee should have been assessed the following periods of reduction:

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

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

- 117 days for the submission of the petition under 37 CFR 1.48 on December 8, 2008, after the mailing of the notice of allowance, from December 8, 2008, the date the petition was filed, to April 3, 2009, the mailing date of the notice of allowance in response to the petition;

- 2 days for the submission of the petition to withdraw from issue on February 24, 2009, after the mailing of the notice of allowance (and payment of the issue fee), from February 24, 2009, the date the petition was filed, to February 25, 2009, the mailing date of the decision in response to the petition;

- 39 days for the submission of the RCE and amendment on February 24, 2009, after the mailing of the notice of allowance (and payment of the issue fee), from February 24, 2009, the date the RCE and amendment were filed, to April 3, 2009, the mailing date of the notice of allowance in response to the RCE and amendment; and,

- 31 days for the submission of the IDS on March 4, 2009, after the mailing of the notice of allowance (and payment of the issue fee), from March 4, 2009, the date the IDS was filed, to April 3, 2009, the mailing date of the Office action or notice in response to the IDS.

37 CFR 1.704(c) provides that "[c]ircumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application ... will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping." (Emphasis added).

In this instance, the periods under 37 CFR 1.704(c)(10) overlap. Specifically, the period of reduction for the submission of the petition under 37 CFR 1.48 on December 8, 2008, from December 8, 2008 to April 3, 2009, completely overlaps the other periods of reduction. Therefore, a single period of reduction of 117 days will be entered.

With regard to the delay under 37 CFR 1.702(b), patentee is reminded that 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. Thus, the over three year

period begins on June 11, 2006, and ends on January 1, 2008, the day before the RCE was filed, and is 570 (not 571) days. See 35 U.S.C. 154(b)(1)(B)(i).

In view of the above, the patent term adjustment is 1032 (not 1150) days (829 days of A delay + 570 days of B delay - 160 days of overlap - 207 days of applicant delay).

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

The Office acknowledges the previous submission of the $200.00 fee set forth in 37 CFR 1.18(e).

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand thirty-two (1032) days.**

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT: 7,563,882 B2

DATED: Jul. 21, 2009 **DRAFT**

INVENTOR(S): ZAUDERER 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 739 days

Delete the phrase "by 739 days" and insert – by 1032 days--

PTA Calculations for Application: 10/457829			
Application Filing Date:	06/10/2003	PTO Delay (PTO):	680
Issue Date of Patent:	07/21/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	90
Post-Issue Petitions:	0	Total PTA (days):	1032
PTO Delay Adjustment:	442		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
148	05/09/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	410		
147	05/09/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		117	
142.5	07/01/2009	PTA 36 MONTHS			
142	07/21/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
141	06/08/2009	EXPORT TO FINAL DATA CAPTURE			
139	06/05/2009	FINISHED INITIAL DATA CAPTURE			
138	06/05/2009	DISPATCH TO FDC			
137	05/22/2009	TC RETURN TO PUBS			
136	05/22/2009	FILING RECEIPT - CORRECTED			
130	04/27/2009	ISSUE FEE PAYMENT VERIFIED			
129	04/29/2009	FILING RECEIPT - CORRECTED			
128	04/28/2009	ISSUE FEE PAYMENT RECEIVED			
120	04/21/2009	SEQUENCE FORWARDED TO PUBS ON TAPE			
119	04/16/2009	PUBS CASE REMAND TO TC			
118	04/07/2009	EXPORT TO INITIAL DATA CAPTURE			
116	04/03/2009	MAIL NOTICE OF ALLOWANCE			
115	03/31/2009	DOCUMENT VERIFICATION			
114	03/31/2009	ISSUE REVISION COMPLETED			
113	03/31/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
112	03/31/2009	EXAMINER'S AMENDMENT COMMUNICATION			
111	03/27/2009	NOTICE OF ALLOWABILITY			
110	03/04/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
106	03/04/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
105	03/19/2009	DATE FORWARDED TO EXAMINER			

104	03/04/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
103	03/19/2009	DISPOSAL FOR A RCE / CPA / R129			
102	03/04/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
101	03/09/2009	MAIL-PETITION DECISION - DISMISSED			
100	03/06/2009	PETITION DECISION - DISMISSED			
99	03/06/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	149		
99	03/06/2009	ADJUSTMENT OF PTA CALCULATION BY PTO			
98	02/25/2009	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
97	02/25/2009	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE			
96	02/24/2009	PETITION ENTERED			
95	02/24/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
94	02/10/2009	PUBS CASE REMAND TO TC			
93	12/08/2008	PETITION ENTERED			
92	12/12/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
91	12/09/2008	ISSUE FEE PAYMENT VERIFIED			
90	12/09/2008	ISSUE FEE PAYMENT RECEIVED			
89	09/22/2008	SEQUENCE FORWARDED TO PUBS ON TAPE			
88	09/18/2008	RECEIPT INTO PUBS			
87	09/12/2008	EXPORT TO INITIAL DATA CAPTURE			
86	09/09/2008	MAIL EXAMINER'S AMENDMENT			
85	09/09/2008	MAIL NOTICE OF ALLOWANCE			
84	09/05/2008	ISSUE REVISION COMPLETED			
83	09/05/2008	DOCUMENT VERIFICATION			
82	09/05/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
81	09/05/2008	CASE DOCKETED TO EXAMINER IN GAU			
80	08/28/2008	EXAMINER'S AMENDMENT COMMUNICATION			
79	08/28/2008	NOTICE OF ALLOWABILITY			
75	06/04/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
71	07/17/2008	CASE DOCKETED TO EXAMINER IN GAU			
70	06/04/2008	REFERENCE CAPTURE ON IDS			
69	06/04/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		0	66

68	06/04/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
67	06/20/2008	DATE FORWARDED TO EXAMINER			
66	06/04/2008	RESPONSE AFTER NON-FINAL ACTION			
64	06/04/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
63	05/22/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
62	03/04/2008	MAIL NON-FINAL REJECTION			
61	02/26/2008	NON-FINAL REJECTION			
60	01/11/2008	DATE FORWARDED TO EXAMINER			
59	01/02/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
58	01/11/2008	DATE FORWARDED TO EXAMINER			
57	01/02/2008	RCE- AF PROCESSED			
56	01/11/2008	DATE FORWARDED TO EXAMINER			
55	01/02/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		62	46
54	01/11/2008	DISPOSAL FOR A RCE / CPA / R129			
53	01/02/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
52	01/02/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
51	11/29/2007	MAIL ADVISORY ACTION (PTOL - 303)			
50	11/28/2007	ADVISORY ACTION (PTOL-303)			
48	11/14/2007	DATE FORWARDED TO EXAMINER			
47	11/01/2007	AMENDMENT AFTER FINAL REJECTION			
46	08/01/2007	MAIL FINAL REJECTION (PTOL - 326)			
45	07/31/2007	FINAL REJECTION			
44	06/13/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	06/13/2007	REFERENCE CAPTURE ON IDS			
42	06/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	40
41	06/21/2007	DATE FORWARDED TO EXAMINER			
40	06/13/2007	RESPONSE AFTER NON-FINAL ACTION		28	37
39	06/13/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	06/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	02/16/2007	MAIL NON-FINAL REJECTION			

36	02/15/2007	NON-FINAL REJECTION			
35	04/12/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	12/18/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33	01/04/2007	CASE DOCKETED TO EXAMINER IN GAU			
32	12/18/2006	REFERENCE CAPTURE ON IDS			
31.7	12/18/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	29
31	12/18/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	12/28/2006	DATE FORWARDED TO EXAMINER			
29	12/18/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
28	11/17/2006	MAIL RESTRICTION REQUIREMENT			
27	11/13/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
26	09/01/2006	DATE FORWARDED TO EXAMINER			
25	08/21/2006	RESPONSE AFTER NON-FINAL ACTION			
24	08/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	08/30/2006	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
22	06/21/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT	680		-1
21	06/16/2006	MISCELLANEOUS ACTION WITH SSP			
20	11/30/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
18	04/12/2005	REFERENCE CAPTURE ON IDS			
17.7	04/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	04/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/18/2004	WORKFLOW INCOMING AMENDMENT IFW			
15	11/03/2003	PRELIMINARY AMENDMENT			
14	05/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	11/12/2003	APPLICATION DISPATCHED FROM OIPE			
12	11/13/2003	APPLICATION IS NOW COMPLETE			
11	11/03/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
10	06/10/2003	CLAIM PRELIMINARY AMENDMENT			

9	11/03/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	09/02/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	06/30/2003	CLEARED BY OIPE CSR			
5	06/26/2003	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
4	06/26/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	06/26/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	06/10/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	06/10/2003	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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FEB 26 2008

In re Application of :

COATES, John D. et al. :
Application No. 10/457,836 : DECISION ON PETITION
Filed: June 09, 2003 : TO WITHDRAW
Attorney Docket No. **SIUC:005US** : 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 05, 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 Steven Highlander, the sole attorney of record. Steven Highlander has been withdrawn as attorney or agent of record. Applicant is reminded that there is no attorney of record at this time.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **JOHN D. COATES**
3312 ARBULADO DRIVE
WALNUT CREEK, CA 94598

cc: **JEFF MYERS**
SOUTHERN ILLINOIS UNIVERSITY AT CARBONDALE
RESEARCH DEVELOPMENT AND ADMINISTRATION
MAIL CODE 4709
CARBONDALE, IL 62901

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 18, 2008

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No 10/457841patent no7257275

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: _____

_____

_____

_____

_____

/Bhavesh Mehta/ — **SPE**

2624 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 6

CARL J. ABRAHAM
3 BAKER HILL ROAD
GREAT NECK, NY 11023

COPY MAILED

OCT 28 2004

OFFICE OF PETITIONS

In re Application of	:	
Carl Abraham	:	
Application No. 10/457,856	:	ON PETITION
Filed: June 10, 2003	:	
Attorney Docket No.	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 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 June 11, 2004.

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

The application is being forwarded to Technology Center AU 3765 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

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NORRIS MCLAUGHLIN & MARCUS, P.A.
P.O. BOX 1018
SOMERVILLE, NJ 08876

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DEC 18 2008

OFFICE OF PETITIONS

In re Application of
Carl J. Abraham
Application No. 10/457,856
Filed: June 10, 2003
Attorney Docket No.

DECISION DISMISSING PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 19, 2008, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 10/225,866.

The petition is **DISMISSED**.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application;
(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 amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment 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.

Before the petition can be granted, petitioner must submit an amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).[1]

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

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

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

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

Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.

David Bucei
Petition Examiner
Office of Petitions

[1] The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 29 2009

OFFICE OF PETITIONS

CARL J. ABRAHAM
3 BAKER HILL RD.
GREAT NECK, NY 11023

In re Patent No. 6,978,487 : DECISION GRANTING PETITION
Issue Date: December 27, 2005 : UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/457,856 : REQUEST FOR CERTIFICATE OF
Filed: June 10, 2003 : CORRECTION
Attorney Docket No. :

This is a decision on the renewed petition, filed April 22, 2009, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/225,866, filed August 22, 2002, 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 nonprovisional 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 June 10, 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 a prior-filed nonprovisional 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) 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 to the above-noted, prior-filed nonprovisional 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 nonprovisional application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

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

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/457,856	06/10/2003	3765	729		26	3

CONFIRMATION NO. 9123

CORRECTED FILING RECEIPT

87534
Carl J. Abraham
3 Baker Hill Rd.
Great Neck, NY 11023

Date Mailed: 10/28/2009

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)

Carl J. Abraham, Great Neck, NY;

Power of Attorney: The patent practitioners associated with Customer Number 23526

Domestic Priority data as claimed by applicant

This application is a CIP of 10/225,866 08/22/2002 PAT 6,675,395

Foreign Applications

If Required, Foreign Filing License Granted: 08/07/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/457,856**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

APPARATUS FOR ENHANCING ABSORPTION AND DISSIPATION OF IMPACT FORCES FOR SWEATBANDS USED IN CONNECTION WITH HELMETS

Preliminary Class

002

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).

OIPE IAP22
APR 22 2009
PATENT & TRADEMARK OFFICE

10/457,856 04-2409 IPW DAC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

Applicant: Carl J. Abraham

Patent No.: 6,978,487

Issued.: 12/27/2005

For: APPARATUS FOR ENHANCING ABSORPTION AND DISSIPATION OF IMPACT FORCES FOR SWEATBANDS USED IN CONNECTION WITH HELMETS

Group Art Unit: 3765

Examiner: Rodney Lindsey

Assistant Commissioner of Patents
Box DAC
Washington, DC 20231
Fax (571) 273-8300

04/24/2009 HVUONG1 00000059 6978487
02 FC:1811 100.00 OP

PETITION UNDER 37 C.F.R. 1.78(a)(3)

Sir:

The claim for benefit of U.S. application No. 10/225,866 (now Patent No. 6,675,395) was unintentionally delayed. Acceptance of the delayed priority claim is respectfully requested.

U.S. Patent No. 6,978,487 issued on December 27, 2005 from application No. 10/457,856 filed on June 10, 2003.

The Applicant unintentionally failed to claim priority, as a Continuation-in-part, to copending application No. 10/225,866 (issued as U.S. Patent No. 6,675,395) which was filed on August 22, 2002.

04/24/2009 HVUONG1 00000059 6978487
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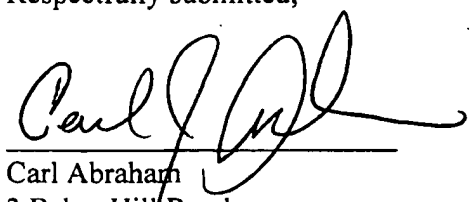
04/24/2009 HVUONG1 00000059 6978487
01 FC:1454 -1410.00 OP

Refund Ref:
10/29/2009 0030076134

Credit Card Refund Total: $1410.00

Am Exp..: XXXXXXXXXXX6000

Respectfully submitted,



Carl Abraham
3 Baker Hill Road
Great Neck, NY 11023

April 22, 2009

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR **PATENT** FEE REFUND

1 Date of Request: 10/15/09 | 2 Serial/Patent # 6,978,487

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
X	Petition 1454		04/22/09	$ 1,410.00
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

Credit Card

7 TOTAL AMOUNT OF REFUND: $ 1,410.00

8 TO BE REFUNDED BY:

- [ ] Treasury Check
- [ ] Credit Deposit A/C #:

9 [ ][ ]--[ ][ ][ ][ ]

10 REASON:

- [ ] Overpayment
- [X] Duplicate Payment
- [ ] No Fee Due (Explanation):

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Irvin Dingle TITLE: Paralegal

SIGNATURE: Irvin Dingle PHONE: 2-3210

OFFICE: Petitions

****

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APPROVED: CKhok DATE: 10/29/09

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
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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100104

QUINTERO LAW OFFICE
1617 BROADWAY, 3RD FLOOR
SANTA MONICA, CA 90404

OCT 28 2004

In re Application of:
Chi-Hui Lin et al.
Serial No.: 10/457,867
Filed: June 10, 2003
For: STACKED GATE FLASH MEMORY DEVICE AND METHOD OF FABRICATING THE SAME

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.10, filed July 14, 2004, via facsimile transmission, requesting consideration the Information Disclosure Statement (IDS) filed via Express Mail on June 1, 2004.

The petition is Dismissed as Moot.

The IDS filed June 1, 2004 has been considered and a copy of the prior art citation, form PTO/SB/08, has been initialed and sent to the applicant on September 14, 2004.

The issue fee has been paid. A patent will be issued in due course.

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

Sharon Gibson, TC Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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MAXIMILIAN R. PETERSON
O'KEEFE EGAN & PETERMAN
BUILDING C, SUITE 200
1101 CAPITAL OF TEXAS HIGHWAY SOUTH
AUSTIN, TX 78746

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NOV 15 2005

OFFICE OF PETITIONS

In re Application of	:	
Renxin Xia et al	:	
Application No. 10/457,874	:	DECISION DISMISSING
Filed: June 10, 2003	:	PETITION
Attorney Docket No. ALTR:011	:	UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed October 14, 2005 to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be filed within TWO MONTHS from the mail date of this decision. Extensions of time are available pursuant to the provisions of 37 CFR 1.136(a).

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 petition fails to comply with item (1) above. More specifically, while notification has been given of the foreign filing, the petition fails to state the date of such foreign filing. Accordingly, the date of foreign filing must be supplied in order to grant the revival of the instant application.

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
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) 272-3220.

Wan Laymon

Wan Laymon
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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O'KEEFE EGAN & PETERMAN
BUILDING C, SUITE 200
1101 CAPITAL OF TEXAS HIGHWAY SOUTH
AUSTIN, TX 78746

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FEB 17 2006

OFFICE OF PETITIONS

In re Application of :
Renxin Xia et al :
Application No. 10/457,874 : DECISION GRANTING PETITION
Filed: June 10, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. ALTR:011 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed December 2, 2005, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on June 8 and June 9, 2004. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m);

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been previously rescinded.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3220.

This matter is being referred to Technology Center Art Unit 2182.

Wan Laymon
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.go

May 17, 2005

Lawrence P. Kessler
Patent Department
NexPress Solutions LLC
1447 St. Paul Street
Rochester, NY 14653-7103

In re Application of:	Weinlich et al.	:	
Application No.	10/457,878	:	NOTICE OF WITHDRAWAL
Filed:	June 10, 2003	:	FROM ISSUE
Attorney Docket No.	81593/LPK	:	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 April 6, 2005, are hereby vacated.

The application is being withdrawn to permit reopening of prosecution for the application of pertinent prior art to the claimed invention.

If the issue fee has been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a Deposit Account.

Telephone inquires should be directed to Drew Hirshfeld at (571) 272-2168.

Howard Goldberg, Director
Technology Center 2800

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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Biotechnology Law Group
c/o Portfolioip
P.O. Box 52050
Minneapolis MN 55402

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NOV 2 4 2008

OFFICE OF PETITIONS

In re Application of :
Nagendu B. Dev, et al. :
Application No. 10/457,894 : DECISION ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. GTI-1130-CT :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 27, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed August 18, 2005, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 19, 2006. The Notice of Abandonment was mailed March 29, 2006.

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

37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

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

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the

burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (over 2 years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on February 19, 2006. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Biotechnology Law Group was counsel of record at the time of abandonment, Biotechnology Law Group should explain why this application became abandoned while it was under their control and what efforts Biotechnology Law Group made to further reply of itself and with whom this matter was discussed outside of Biotechnology Law Group. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), Daniel Chambers and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at Biotechnology Law Group, and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the

revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 2 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons then at Biotechnology Law Group and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and

(B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

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.

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

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

Chris Bottorff
Petitions Examiner
Office of Petitions

cc: **Daniel Chambers**
527 N. Highway 101, Suite E
Solana Beach, CA 92075-1173

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GAZDZINSKI & ASSOCIATES, P.C.
16644 WEST BERNARDO DRIVE
SUITE 201
SAN DIEGO, CA 92127

Mail Date: 04/21/2010

Applicant	: Erik P. Staats	: DECISION ON REQUEST FOR
Patent Number	: 7653755	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/457,924	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

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DEC 19 2006

OFFICE OF PETITIONS

In re Patent No. 6,852,384 :
Issue Date: February 8, 2005 :
Application No. 10/457,935 : NOTICE
Filed: June 10, 2003 :
Attorney Docket No. 7272-40 :

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.

Liana Walsh
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

www.uspto.gov

MILA KASAN, PATENT DEPT.
APPLIED BIOSYSTEMS
850 LINCOLN CENTRE DRIVE
FOSTER CITY CA 94404

COPY MAILED

SEP 2 2 2008

OFFICE OF PETITIONS

In re Application of :
Lawrence GREENFIELD :
Application No. 10/457,943 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 4962 US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 21, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of October 29, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is April 30, 2008.

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

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

This application is being referred to Technology Center AU 1639 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.

Thurman Page
Petitions Examiner
Office of Petitions

RAM Fee History Query

Revenue Accounting and Management

Name/Number: 10457943 Total Records Found: 15

Start Date: Any Date End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
05/22/2008	00005577	4	1453	$1,540.00	05/21/2008	DA 012213
05/22/2008	00005579	4	1801	$810.00	05/21/2008	DA 012213
04/21/2008	00007864	4	1253	$1,050.00	04/18/2008	DA 012213
04/21/2008	00007865	4	1806	$180.00	04/18/2008	DA 012213
08/30/2007	00000001	1	1201	$400.00	08/21/2007	DA 012213
08/30/2007	00000002	1	1202	$100.00	08/21/2007	DA 012213
08/22/2007	00005919	4	1251	$120.00	08/21/2007	DA 012213
04/20/2007	00000039	1	1253	$1,020.00	04/20/2007	DA 012213
08/10/2006	00000001	1	1255	$1,140.00	07/31/2006	DA 012213
08/01/2006	00000028	1	1253	$1,020.00	07/31/2006	DA 012213
10/09/2003	00000204	1	1051	$130.00	10/01/2003	CK
10/06/2003	00000212	1	8021	$40.00	10/02/2003	CK
06/12/2003	00000045	1	1001	$750.00	06/09/2003	DA 060916
06/12/2003	00000046	1	1201	$84.00	06/09/2003	DA 060916
06/12/2003	00000047	1	1202	$1,314.00	06/09/2003	DA 060916

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Lawrence Greenfield

Serial No.: 10/457,943

Filed: June 9, 2003

For: METHODS FOR SELECTING PROTEIN BINDING MOIETIES

Confirmation No. 8430

Group Art Unit: 1639

Examiner: Amber D. Steele

CERTIFICATE OF EFS WEB TRANSMISSION

Date: May 21, 2008

I hereby certify that this correspondence and any other attachment noted on the automated Acknowledgment Receipt, is being transmitted to the Commissioner for Patents via the EFS Web server on the date indicated above.

Mila T. Kasan
(Name)

(Signature)

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)

Attention Office of Petitions
Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to an Advisory Action by the U.S. Patent and Trademark Office. The date of abandonment is the day after the mailing of the Advisory Action of May 7, 2008.

Previously, Applicants timely filed an Amendment on April 18, 2008 in response to a Final Office Action mailed on October 29, 2007. The Amendment was a bona fide attempt to address issues raised in the October 29, 2007, Action. Applicants did not intend for the application to go abandoned as evidenced by the petition for a three month extension of time and authorization for all necessary fees mailed with the Amendment of April 18, 2008 and a copy of an email dated April 9, 2008 showing the intention of the Applicants to file a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Applicants hereby petition for revival of this application.

1. Petition Fee:

The Commissioner is hereby authorized to charge the Petition fee of $1540.00 to Deposit Account No. 01-2213 **(Order No. 4962 US)**.

2. Reply and Fee:

The reply to the Advisory Action mailed on May 7, 2008 is in the form of a Request for Continued Examination in compliance with 37 CFR 1.114, and is enclosed herewith.

3. Terminal Disclaimer:

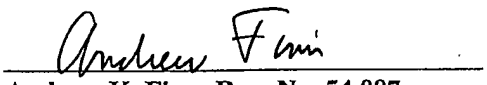
Since the utility application was filed after June 8, 1995, no terminal disclaimer is required.

4. Statement under 37 CFR 1.137(b)(3)

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

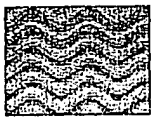
Respectfully submitted,

Date: May 21, 2008



Andrew K. Finn, Reg. No. 54,097
Agent for Applicants

Correspondence Address
Customer Number 22896
APPLIED BIOSYSTEMS
850 Lincoln Center Drive
Foster City, CA 94404
650-554-3392 (Phone)
(650) 638-6677 (Fax)



Andrew K Finn/FOS/PEC
04/09/2008 06:15 PM

To Milagrosa T Kasan/FOS/PEC@PEC
cc Timothy H Joyce/FOS/PEC@PEC, Scott R Bortner/FOS/PEC@PEC
bcc
Subject 4962US response

Hi Mila,

can you please prepare a response for the 4962US case (binder finder), due April 29, based on the attached, in the form of an RCE.

Also, please note p. 3 of the Examiner's Action, where the need for a new IDS is discussed.

I've placed the file and this email in your basket.

Thanks, Andy

4962US - Response to Final Rejection April 2008 Draft (136900_1).DOC

Andrew K. Finn, Ph.D.
Patent Agent
Applied Biosystems
850 Lincoln Centre Drive
Foster City, CA 94404
T 650 554 3392 F 650 638 6677
finnak@appliedbiosystems.com

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Paper No. 3

JOSEPH J BERGHAMMER
BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO IL 60606

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JUL 17 2003

OFFICE OF PETITIONS

ON PETITION

In re Reissue Application No 10/457,958
Filed: June 10, 2003
Original Patent No. 6,327,497 B1
Issue Date: December 4, 2001
Patentee: Kirchgeorg et al.
Attorney Docket No.: 005471.00002

This is a decision on the petition filed by facsimile transmission June 30, 2003 , under 37 CFR 1.182 (see MPEP 1441) requesting that the normal two month delay period triggered by *O.G.* publication of the instant filing be excused, so that examination on the merits may be accelerated.

The petition to excuse the two month delay period is granted to the extent *infra*.

The announcement of the filing of the instant reissue application is scheduled to appear in the *Official Gazette (O.G.)* of July 29, 2003. Thus, unless the two month period for accepting public protests as timely is excused, the earliest that this application will be taken up for examination will be September 29, 2003.

As noted in 42 *Federal Register* 5588 (January 28, 1977) the purpose of announcing the filing of a reissue in the *O.G.* was to give members of the public time to review the reissue application and to submit pertinent information to the Office before the examiner's action. In this respect, it is assumed that any party(s) that may be the subject of litigation as mentioned in the petition has been informed of the filing of the present reissue.

The request is granted to the extent that the primary examiner will take up this application *as quickly as possible,* it being noted that reissue applications are already accorded special status. As authorized, the $130 petition fee has been charged to counsel's account.

Any protest filed pursuant to 37 CFR 1.291, which is submitted by the public, will be considered if filed prior to final rejection or allowance. Under the present circumstances, however, **any protest filed by** September 29, 2003, will be considered timely and will be **fully considered** by the primary examiner, even if the examiner has closed prosecution on the merits, or mailed an indication of Allowability, by the said date.

As all initial processing of this file has been completed, the application is being forwarded to Technology Center AU 3762, via the Office of the Group Director, for action by the primary examiner not inconsistent with this decision.

Telephone inquiries concerning this decision may 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

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/457,997	06/10/2003	Lee A. Bissonnette	VWS-557-A (VWS0382/0312)	2202

48980 7590 09/24/2008

YOUNG & BASILE, P.C.
3001 WEST BIG BEAVER ROAD
SUITE 624
TROY, MI 48084

EXAMINER	
FERGUSON, MICHAEL P	

ART UNIT	PAPER NUMBER
3679	

NOTIFICATION DATE	DELIVERY MODE
09/24/2008	ELECTRONIC

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

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

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@youngbasile.com
audit@youngbasile.com

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FROM DIRECTORS OFFICE

SEP 21 2008

TECHNOLOGY CENTER 3600

Thomas D. Helmholdt
YOUNG & BASILE, P.C.
3001 West Big Beaver Road, Suite 624
Troy, MI 48084-3107

In re Application of
Lee A. Bissonnette et al
Application No. 10/457,997
Filed: June 10, 2003
Attorney Docket No.: VWS-557-A
For: TUBULAR LINK WITH INTEGRAL CRIMP SOCKET JOINT WITH SECONDARY SIDE CRIMP

DECISION ON PETITION TO INVOKE SUPERVISORY AUTHORITY UNDER 37 CFR 1.181

This is in response to applicants' petition to invoke supervisory authority under 37 CFR 1.181 filed August 25, 2006 requesting withdrawal of the Notice of Non-Responsive Amendment mailed August 3, 2006 and either acceptance of the appeal brief filed May 15, 2006 or a new Notice of Non-Compliant Appeal Brief.

The petition is **GRANTED** to the extent indicated below.

A review of the record reveals the following:

1. An appeal brief was first filed on October 27, 2005.
2. A Notification of Non-Compliant Appeal Brief was mailed December 28, 2005 which pointed out that applicants' appeal brief failed to comply with numerous of the provisions of 37 CFR 41.37, including failure to properly map out the claims and identify every means plus function in the claims (note box 4).
3. A second appeal brief was filed on January 30, 2006.
4. A Notification of Non-Responsive Amendment was mailed April 25, 2006 which pointed out that applicants' second appeal brief failed to properly correct several of the previously noted defects and indicated that applicant's time for reply continued to run from the December 28, 2005 mailing date of the Notification of Non-Compliant Appeal Brief.
5. A third appeal brief was filed on May 5, 2006.
6. A "supplemental" appeal brief replacing the third appeal brief was filed on May 15, 2006[1].
7. A second Notification of Non-Responsive Amendment was mailed August 3, 2006 which pointed out that applicants once again did not file a proper brief that corrects the

[1] The "supplemental" appeal brief of May 15, 2006 appears to be nothing more than a duplicate of the appeal brief filed on May 5, 2006, but formatted slightly differently.

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previously identified defects and indicated that applicant's time for reply continued to run from the December 28, 2005 mailing date of the Notification of Non-Compliant Appeal Brief.

8. The second Notification of Non-Responsive Amendment that was mailed August 3, 2006 goes on to identify two specific points of non-compliance, i.e., that the Summary of the Claimed Subject Matter was defective and that the arguments for claims 46 and 47 needed to be under separate subheadings since these claims depended from different independent claims.

Applicants first assert that the revised appeal brief filed May 15, 2006 is in compliance with the rules and should be accepted. Applicants further state that the examiner was contacted on May 29, 2006 to verify compliance of the brief and that the examiner indicated that the appeal brief was acceptable.

With respect to the telephonic communication referred to by applicants, it is first noted that there is no interview summary from the examiner indicating the substance of the interview and what agreements, if any, there were. Second, applicants' summary of the interview filed on June 2, 2006 indicates that the examiner only "briefly reviewed" the refiled appeal brief. This would appear to imply that any review that may have been conducted was only cursory and not a close, detailed review of the appeal brief. Nevertheless, 37 CFR 1.2 makes clear that all business with the U.S. Patent and Trademark Office should be transacted in writing and that no attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. The written evidence of record indicates that the examiner found the appeal brief to still not be compliant irrespective of applicants' understanding that the appeal brief was now compliant.

Further, independent review of the appeal brief filed on May 15, 2006 confirms that this appeal brief is non-compliant. For example, as pointed out by the examiner, the Summary of the Claimed Subject Matter still fails to provide a concise explanation of the subject matter of each independent claim separately. Each independent claim is to be mapped wholly in and unto itself apart from any other claim. Applicants do not do this in the appeal brief of May 15, 2006. Instead, the first paragraph under this heading lumps claims 1, 5 and 8 together for supposed common elements and then includes further mapping of claim 1 in the next paragraph (see page 2 of the appeal brief) and claims 5 and 8 on the following page and after some mapping of other, dependent, claims (see page 3). This is then repeated with respect to claims 23, 27 and 30 on pages 3 and 4 of the appeal brief. It is further noted that the mapping provided fails to refer to the specification by page and line number as is required. While paragraph numbering may be included, it cannot be included as a substitute for providing the page number.

The independent review also reveals that applicants have failed to properly identify the "structure, material, or acts" corresponding to each means plus function identified. For example, claim 1 recites a "shaped means...for increasing static load of a crimped joint to be formed in cooperation with the tenon portion of the body". Applicants identify this "means" but otherwise fail to identify the structure corresponding to this "means" as described in the specification. In this regard, it should be noted that two locations are identified by applicants. However, the first location (paragraph [0034], lines 6-8) merely identifies the "means" by the function to be

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performed. This passage fails to identify what the structure, as disclosed, is for this "means". Further, it is evident from at least paragraph [0035] that specific structure has been described for the "shaped means". The second location (paragraph [0041], lines 5-8) cannot be found in the specification because the paragraph numbering only goes up to paragraph [0040]. Accordingly, applicants have still not complied with the requirement to identify what is the disclosed structure that constitutes the "shaped means".

With respect to the inclusion of Evidence and Related Proceeding appendices, it is noted that these appendices are blank. If there is no evidence being relied upon in the appeal and no copies of related proceedings being submitted, then these appendices should include the word --None--. See MPEP 1205.02.

It should be noted that each of the above discussed deficiencies have been present and identified by the examiner since the original Notification of Non-Compliant Appeal Brief mailed December 28, 2005 and remain uncorrected. See checked box 4 and boxes 1, 8 and 9 of the form PTOL-462 as well as lines 1-4 and 7-8 of the Continuation Sheet to that form.

The examiner also indicates that claims 46 and 47 should be argued separately under separate subheadings because they depend from separate independent claims. Applicants assert that this issue as raised by the examiner is incorrect and, in any event, was raised for the first time in the Notification of Non-Responsive Amendment mailed August 3, 2006. Accordingly, it is applicants' position that a new Notification of Non-Compliant Appeal Brief setting forth a new time period should have been issued by the examiner.

Applicants are correct that the issue regarding claims 46 and 47 having to be separately argued under separate headings was not raised by the examiner prior to its inclusion in the Notification of Non-Responsive Amendment mailed August 3, 2006. It is noted that the original notice of non-compliance included reference to claims being argued separately not being provided with separate subheadings. However, claims 46 and 47 are not being argued separately or otherwise intended to be argued separately. Additionally, the current issue, as stated by the examiner, is one where the examiner believes that claims 46 and 47 should be argued separately and not that they have been argued separately and thus must have separate subheadings. Accordingly, this issue was a new point of non-compliance that required that applicants be given a new one month time period.

In view of the fact that the issue regarding claims 46 and 47 constituted a new issue of non-compliance presented for the first time in the communication of August 3, 2006, the holding of applicants' timely filed appeal brief of May 15, 2006 as "non-responsive" by the examiner was in error. However, as discussed above, applicants' appeal brief of May 15, 2006 remains defective for failure to comply with one or more of the provisions of 37 CFR 41.37. Accordingly, the Notification of Non-Responsive Amendment mailed August 3, 2006 is hereby reset to have a new period for response run from the mailing date of this decision. In order to avoid dismissal of the appeal, applicants must file a corrected appeal brief or other appropriate correction (see MPEP 1205.03) within **ONE (1) MONTH OR THIRTY DAYS** from the mailing of this petition decision, whichever is longer. Extensions of this time period may be granted under 37 CFR1.136(a).

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Any questions regarding this decision should be directed to Supervisory Patent Examiner Daniel P. Stodola at (571) 272-7087.

Donald T. Hajec, Director
Technology Center 3600
(571) 272-5150
Facsimile No.: (571) 273-8300

SNM/DS: 9/17/08

SM

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PAULA D. MORRIS & ASSOCIATES, P.C.
10260 WESTHEIMER, SUITE 360
HOUSTON TX 77042

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APR 2 7 2004

OFFICE OF PETITIONS

Applicant: Webb et al.
Appl. No.: 10/458,023
Filing Date: June 10, 2003
Title: METHOD FOR ACCELERATED AGING OF CATALYTIC CONVERTERS INCORPORATING INJECTION OF VOLATILIZED LUBRICANT
Attorney Docket No.: SwRI-2503-06
Pub. No.: US 2004/0028588 A1
Pub. Date: February 12, 2004

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was received on March 26, 2004.

The request is DISMISSED.

The instant request is that the patent application publication be republished because the assignee information (Southwest Research Institute) is missing from the front page of the publication.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1] The instant request does not identify a material mistake in the publication made by the Office:

The instant request does not identify a material mistake in the publication made by the Office. The assignment information was not printed on the patent application publication, because it was not provided on the transmittal letter or on an application data sheet.[2] The Office prints the assignee information as reflected on the transmittal letter or application data sheet, if provided by applicant and does not look at the assignment records for the assignment information.

Even if the assignment information was provided by applicant, this would not be a material mistake. A "material mistake" must 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

---

[1]Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

[2]See Comment 59, Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57047 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 84 (Oct. 10, 2000) (final rule).

upon issuance of a patent.

On September 5, 2003, a Filing Receipt was mailed, which did not list the assignment information. To avoid this type of problem in the future, applicant's representative should make request a corrected filing receipt using the facsimile number (703-746-9195) on the Filing Receipt.

Applicant's request for a corrected patent application publication on March 26, 2004, may constitute a "failure to engage in reasonable efforts to conclude processing or examination of the application." See 1.704(c). This determination will be made on or after a mailing of a Notice of Allowance.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), should be submitted via the EFS system and questions should be addressed as follows:

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

By facsimile: 703-872-9306

The application will be examined in due course.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Curt Harrington
Suite 250
6300 State University Drive
Long Beach, CA 90815

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JUL 07 2004

OFFICE OF PETITIONS

In re Application of
Yoshiyuki Yokoyama
Application No. 10/458,026
Filed: June 9, 2003
Attorney Docket No. KIYO-40

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed 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. 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 petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The application became abandoned for failure to pay the issue fee on or before May 24, 2004. Receipt is acknowledged of the requisite issue/publication on June 4, 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 (703) 305-9220. 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

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
10/458,028	06/09/2003	2829	750	5649-1067	18	20	3

CONFIRMATION NO. 8926

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

CORRECTED FILING RECEIPT

OC000000013280570

Date Mailed: 07/20/2004

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)

Chang-Sub Lee, Suwon-si, KOREA, REPUBLIC OF;
Jeong-Dong Choi, Anyang-si, KOREA, REPUBLIC OF;
Seong-Ho Kim, Yongin-si, KOREA, REPUBLIC OF;
Shin-Ae Lee, Suwon-si, KOREA, REPUBLIC OF;
Sung-Min Kim, Incheon-si, KOREA, REPUBLIC OF;
Dong-Gun Park, Seongnam-si, KOREA, REPUBLIC OF;

Domestic Priority data as claimed by applicant

Foreign Applications

REPUBLIC OF KOREA 2002-63818 10/18/2002

If Required, Foreign Filing License Granted: 08/05/2003

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Methods of manufacturing transistors and transistors having an anti-punchthrough region

Preliminary Class

438

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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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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SEP 19 2005

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

In re application of
Johnathan Kepecs
Application No. 10/458,029 : DECISION ON REQUEST
Filed: June 9, 2003 : FOR WITHDRAWAL OF
For: SYSTEM AND METHOD FOR : ATTORNEY
INVERTED PROMOTIONS

This is a decision on the request filed on May 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 in the above-identified application is not approved because the request does not comply with conditions A) and B) above.

As to condition A) Currently there are two attorneys originally appointed that are not associated with Customer Number 20350. If only one attorney of record is to be withdrawn, it must be clearly stated in any substitute request.

As to condition B) the reason "Client requests transfer of matter to firm listed", does not correspond to any of the reasons set forth in 37 CFR 10.40 (b) or (c).

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6587

KJD/dcg: 7/5/05

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Paper No. 8

GEAM - SILICONES - 60SI
IP LEGAL
ONE PLASTICS AVENUE
PITTSFIELD MA 01201-3697

COPY MAILED

SEP 12 2005

OFFICE OF PETITIONS

In re Application of	:	
Gedon et al.	:	
Application No. 10/458,036	:	ON PETITION
Filed: June 10, 2003	:	
Attorney Docket No. 1302-67	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 11, 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 August 15, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on November 16, 2003. A Notice of Abandonment was mailed March 25, 2004.

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

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 solely to the address currently of record until such time as appropriate instructions are received to the contrary.

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 notify the Office.

The file is being forwarded 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

cc: DILWORTH & BARRESE, LLP
ATTN: ADRIAN T. CALDERONE
333 EARLE OVINGTON BLVD.
UNIONDALE, NY 11553

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Paper No. 6

MARK A. SUPERKO, ESQ.
VARIAN SEMICONDUCTOR EQUIPMENT
ASSOCIATES, INC.
35 DORY ROAD
GLOUCESTER, MA 01930

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SEP 26 2005

OFFICE OF PETITIONS

In re Application of :
Liebert et al. :
Application No. 10/458,037 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. V0077.70235US00 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 29, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed August 4, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 5, 2003. A Notice of Abandonment was mailed on September 9, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of replacement drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the replacement drawings have been 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 request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The file is 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) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

Cc: WOLF, GREENFIELD & SACKS, PC
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

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KLARQUIST SPARKMAN LLP
121 SW SALMON STREET
SUITE 1600
PORTLAND, OR 97204

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JAN 0 3 2008

OFFICE OF PETITIONS

In re Application of :
Kuoching Lin et al :
Application No. 10/458,067 : DECISION GRANTING PETITION
Filed: June 9, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1011-65947-01 :

This is a decision on the petition, filed December 31, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 14, 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 2825 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\jan11\458067.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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MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

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JUN 13 2006

OFFICE OF PETITIONS

In re Application of :
Cliff et al. :
Application No. 10/458,074 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. 061094-5011 :

This is a decision on the petition under 37 CFR 1.181, filed May 8, 2006, to withdraw the holding of abandonment.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee and publication fee, if applicable, on or before February 15, 2006. Accordingly, this application became abandoned on February 16, 2006. A Notice of Abandonment was mailed on March 28, 2006.

Petitioner asserts the Office action was never received and that the Office mailed the action to the wrong address. A review of the application file indicates that the Office action was mailed to an incorrect address. The Office sincerely apologizes for this error.

Accordingly, the petition is granted and the holding of abandonment is withdrawn.

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) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

AUG 25 2003
PATENT & TRADEMARK OFFICE

APR 19 2002

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APR 16 2002

OFFICE OF PETITIONS

Irving N. Feit, Esq.
HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791

In re Application of
Ashley, et al.
Application No. 09/911,861
Filed: July 24, 2001
Attorney Docket No. 512-30CIP III
For: NOVEL
4-DEDIMETHYLAMINOTETRACYCLINE
DERIVATIVES

DECISION GRANTING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed January 15, 2002.

The petition is **GRANTED**.

Petitioner has shown that inventor Joseph J. Hlavka has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Lauren T. Emr has sufficiently established that the inventor received the application papers and thereafter refused to execute the declaration.

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

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing 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 issuance of a corrected filing receipt.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 4

HOFFMAN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

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OCT 09 2003

OFFICE OF PETITIONS

In re Application of :
Ashley et al. :
Application No. 10/458,076 :
Filed: 10 June, 2003 : LETTER
Atty Docket No. 512-30 CIP III/DIV :

This is in response to the petition under 37 CFR 1.47(a) filed on 25 August, 2003.

The petition is **DISMISSED AS MOOT**.

In accordance with 37 CFR 1.63(d), petitioner has submitted a copy of the executed oath or declaration filed in Application No. 09/911,861, filed on 24 July, 2001, of which the instant filing is a divisional application. Furthermore, a copy of the decision, mailed on 16 April, 2002, granting a petition to accord § 1.47(a) status to the prior application has been placed in the file of the present application.

As Rule 1.47(a) status was granted in the prior application, this application is hereby accorded Rule 1.47(a) status.

As no petition is necessary to accord Rule 1.47(a) status in this application, the petition is dismissed as moot. No petition fee is necessary and none has been charged.

As provided in Rule 1.47(c), since notice was provided after the grant of Rule 1.47(a) status in the prior application, the Office is dispensing with the notice provision in this divisional application.

After this decision is mailed, the application will be forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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SEP 25 2006

OFFICE OF PETITIONS

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

In re Patent No. 6,894,036 :
Issued: May 17, 2005 :
Application No.: 10/458,076 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No: 512-30 CIPIII/DIV :

This is a regarding the "Request for Excusal of Erroneous Payment of Small Entity Fee under 37 CFR 1.28(c)" filed May 15, 2006, which will be treated as a petition under 37 CFR 1.28(c).

The petition is **GRANTED.**

By the instant petition, petitioner informs the USPTO that the inventive entity is not eligible for small status. The loss of small entity status is acknowledged and noted in the application file.

The application file will be directed to the Files Repository.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

9/16/03

Bromberg and Sunstein LLP
125 Summer Street
Boston MA 02110-1618

Dear Applicant:

The Box PGPub replacement drawings for application number 10/458,077 received on 8/8/03 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Customer Service, Office of Initial Patent Examination, at 703-308-1202.

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

Signature of Reviewer, Office of Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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LEVINE BAGADE, LLP
2483 EAST BAYSHORE ROAD, SUITE 100
PALO ALTO, CA 94303

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FEB 2 1 2006

OFFICE OF PETITIONS

In re Application of :
Michael D. Laufer, et. al. :
Application No. 10/458,085 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. BRONNE00700 :

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

The application became abandoned for failure to timely reply in a timely manner to the Restriction Requirement mailed June 17, 2005.

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

The Office also acknowledges receipt of $1,080 for a five (5) month extension of time. However an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,080 extension of time fee, filed January 9, 2006, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's credit card.

This application file is being referred to Technology Center Art Unit 3738.

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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BRONCUS TECHNOLOGIES, INC. C/O
LEVINE BAGADE HAN LLP
2483 E. BAYSHORE ROAD SUITE 100
PALO ALTO CA 94303

MAILED

MAR 3 1 2009

OFFICE OF PETITIONS

In re Application of
Laufer et al.
Application No. 10/458,085
Filed: June 9, 2003
Attorney Docket No. BRONNE00700

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed December 29, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/147,528, filed August 5, 1999, as set forth in the concurrently filed amendment and Application Data Sheet (ADS).

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified by 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional application as required by 37 1.78(a)(5)(iii). Additionally, intermediate nonprovisional Application No. 09/633,651, filed August 7, 2000, was filed within twelve months of the filing date of the prior-filed provisional application, Application No. 60/147,528, which was filed on August 5, 1999, for which priority is claimed.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title and an ADS, as provided by 37 CFR 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the above-noted, prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3206. Any other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 3738 for appropriate action on the amendment submitted December 29, 2008, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/147,528, as well as processing of the Request for Continued Examiner under 37 CFR 1.114 filed concurrently.

Liana Walsh
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/458,085	06/09/2003	3738	917	BRONNE00700	58	2

CONFIRMATION NO. 8340

CORRECTED FILING RECEIPT

74059
Broncus Technologies, Inc. c/o
Levine Bagade Han LLP
2483 E. Bayshore Road Suite 100
Palo Alto, CA 94303

OC000000035239560

Date Mailed: 03/30/2009

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)

Michael D. Laufer, Menlo Park, CA;
Cary Cole, Mountain View, CA;
Bryan Loomas, Los Gatos, CA;
Gary Kaplan, San Francisco, CA;
Cary J. Reich, Los Gatos, CA;
Ed Roschak, Mission Viejo, CA;
Trudy Estridge, Fremont, CA;

Assignment For Published Patent Application

Broncus Technologies, Inc., Mountain View, CA

Power of Attorney: The patent practitioners associated with Customer Number 40518

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/420,440 10/21/2002
and claims benefit of 60/387,163 06/07/2002
and is a CIP of 10/235,240 09/04/2002
which is a CIP of 09/947,144 09/04/2001 PAT 7,175,644
which is a CIP of 09/908,177 07/18/2001 ABN
which is a CON of 09/633,651 08/07/2000 PAT 6,692,494
which claims benefit of 60/176,141 01/14/2000
and claims benefit of 60/147,528 08/05/1999

Foreign Applications

If Required, Foreign Filing License Granted: 08/06/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/458,085**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****
Title

Methods and devices for maintaining patency of surgically created channels in tissue

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

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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.

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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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MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

Mail Date: 04/21/2010

Applicant	: Joshua Makower	: DECISION ON REQUEST FOR
Patent Number	: 7606615	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/458,153	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1023** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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The Law Office of Deepti Panchawagh-Jain
3039 Calle De Las Estrella
San Jose, CA 95148

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re application of:
Mark Christopher Layton
Application No. 10/458,161 : DECISION ON REQUEST
Filed: June 9, 2003 : FOR WITHDRAWAL OF
For: SYSTEM AND METHOD FOR ENABLING : ATTORNEY
MORE INFORMED RELATIONSHIP DECISIONS

This is a decision on the request filed on July 6, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), the reason "per discussion with client" is not appropriate since it is not clear that the client initiated the withdrawal, or that the client knowingly or freely assents to the withdrawal. A proper reason for withdrawal as enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(703) 308-2121

RAR/vdb: 10/26/04

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JUL 18 2005

Belasco, Jacobs & Townsley, LLP
Howard Hughes Center
6100 Center Drive
Suite 630
Los Angeles, CA 90045

In re application of
Mark Christopher Layton
Application No. 10/458,161 : DECISION ON REQUEST
Filed: June 9, 2003 : FOR WITHDRAWAL OF
For: SYSTEM AND METHOD FOR : ATTORNEY
ENABLING MORE INFORMED
RELATIONSHIP DECISIONS

This is a decision on the request filed on December 2, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED as MOOT**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved as moot because the power of attorney has already been changed as per the Notice regarding Change of Power of Attorney mailed February 16, 2005.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6611

SNM/dcg: 6/30/05

cc: The Law Office of Deepti Panchawagh-Jain
3039 Calle De Las Estrella
San Jose, CA 95148

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Washington, DC 20036

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OFFICE OF PETITIONS

In re Application of Lin :
Application No. 10/458,190 : Decision on Petition
Filing Date: June 11, 2003 :
Attorney Docket No. L9079.03102 :

This is a decision on the petition under 37 CFR 1.181, filed March 29, 2005, to withdraw the holding of abandonment.

The petition is **granted.**

A non-final Office action was mailed August 5, 2004. The Office action set a shortened statutory period for reply of three (3) months.

A reply was not matched with the file. As a result, a Notice of Abandonment was mailed March 23, 2005.

Petitioner contends and has established a reply was timely filed on November 4, 2004. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 3749 will be informed of the instant decision and the examiner will consider the merits of the amendment, originally filed November 5, 2004, 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

In re Application of:
Satou
Application No. 10/458,198
Filed: June 11, 2003
PGPUB: US200302207506A1 11/6/03.
Docket No.: 039280.97

: ON PETITION

This is a decision on the petition filed October 27, 2005, requesting under 37 CFR 1.182 that the USPTO convert the above-identified application to an application that is both a divisional and a reissue having the same filing date, from its current status as that of a divisional, but non-reissue, application.

The petition is **dismissed**. This is not a final agency action. Any request for reconsideration of this decision must be filed within TWO MONTHS of the above-given mail date. See 37 CFR 1.181(g). This time period is not extendable under the provisions of 37 CFR 1.136(a) or (b).

BACKGROUND

Original application for patent no. 08/849, 288 entered the national stage in the United States under 35 U.S.C. § 371 on May 30, 1997, from international application no. PCT/JP96/02858 filed October 2, 1996, and was issued in due course as U.S. Patent No. 5,930,607 ('607) on July 27, 1999.

On July 13, 2001, applicants filed an application that was assigned application number 09/903,639 ('639). The application, as filed, clearly and unambiguously sought to reissue the '607 patent. This was reflected in, *inter alia*, its transmittal letter, reissue declaration, consent of the assignee to the filing of a reissue, request for transfer of drawings from the original patent to the reissue, claim for priority, as well as by way of presentation the specification in the form of the printed patent in double column format as required by 37 CFR 1.173(a)(1), the presence of each of the original patent claims, bearing the same number as in the patent being reissued, per 37 CFR 1.177(b), and the numbering of claims following the numbering of the highest numbered original patent claim, per 37 CFR 1.177(b), with the underlining of each newly present claim in the manner required by 37 CFR 1.173(b). The '639 application, as filed, was a broadening reissue application that included15 new claims. The error given in the reissue declaration was that the patent claimed less than the inventor had a right to

claim in that the original patent claims patent were unduly limited, and the reissue application was filed within 2 years of the original patent issue date.

On September 19, 2001, the USPTO mailed a filing receipt in the '639 reissue application to counsel, which was received on September 21, 2001 by counsel. The filing receipt included the caveat that applicant was to verify the accuracy of the data presented on the receipt.

On October 24, 2001, applicants filed a request in the '639 reissue application, per the above-noted caveat, for correction of the spelling of the inventor's first name to now include the last letter of the given name.

On April 11, 2003, the examiner mailed a Notice of Allowance in the '639 reissue application.

On June 6, 2003, applicant paid the issue fee in the '639 reissue application.

On June 11, 2003, the above-captioned divisional application number 10/458,198 ('198) was filed, using, as permitted by 37 CFR 1.63(d)(iv), the declaration from the '639 parent case, which necessarily also complied with 37 CFR 1.63. As discussed in more detail below, applicant's did not comply with any of the regulations specific to reissue applications in general, much less to those regulations specific to an application that is both a divisional and a reissue application.

On July 31, 2003, the USPTO mailed a filing receipt in the instant '198 application. The filing receipt included the caveat that applicant was to verify the accuracy of the data presented on the receipt. The filing receipt apprised applicant that he had filed a divisional application of the '609 reissue application; it did not apprise applicant that he had filed an application that was both a divisional of the '609 reissue application and a reissue of the '607 patent.

On October 28, 2003, the '639 reissue application was issued as RE38,292 with 18 additional claims over those issued in the original '607 patent.

On November 5, 2003, the USPTO mailed a Notice of Publication of Application that advised applicant that the instant '198 divisional application would be published on November 6, 2003, as US-2003-0207506-A1.

On November 6, 2003, the instant '198 divisional application was published as indicated immediately above.

OPINION

Petitioner complains that the above-identified application "is presently erroneously being treated by the Patent Office as a [non-reissue] divisional application of Reissue Patent No. RE38,292 issued October 28, 2004 [from] application No. 09/903,639('639) filed July 13, 2001." Petitioner notes that under the rationale of In re Bauman, 214 USPQ 585 (CCPA 1982), the original patent No. 5,930,607('607) issued July 17, 1999, which was reissued by the parent '639 application for reissue is available as prior art against the instant '198 application if the instant '198 application is treated as a non-reissue divisional of the '639 application, as opposed to being treated as a divisional application of the '639 application, but which likewise seeks to reissue the original '607 patent. Petitioner further asserts that it was applicant's intent to cover additional subject matter not originally claimed by using the instant application papers as a broadening reissue, but applicant is now barred from obtaining such broadening claims if the instant application is not treated as a reissue.

Inspection of the record of this application fails to support applicant's contention that the USPTO has "erroneously" treated this application as any thing other than a non-reissue divisional application, and even more importantly, that petitioner has previously considered the instant application for as a divisional reissue of the original '607 patent, or even an application for reissue of RE38,292, or that petitioner was diligent in seeking to correct his alleged filing error, or the alleged error of the USPTO.

Initially, petitioner points to the reissue declaration from the parent reissue application that was present on the filing of the instant application, as evidence of the patent owner's intent to here file an application that was both a divisional and reissue application. However, as 37 CFR 1.63(d)(iv) expressly authorizes re-submission of the declaration from a parent application when a divisional application is filed, the presence of the declaration from the parent application did not and does not establish that petitioner was also seeking reissue by way of this divisional application. Likewise, the amendment to the first line of the specification was consistent with the filing of a non-reissue divisional application per Bauman from the prior '639 reissue application.

Indeed, what was conspicuously absent herein on filing are those indicia of the fact that a reissue has been filed. The absence of the following indicia of the fact that an application that was both a divisional of the '639 application and also a reissue of the '607 patent had been filed, renders petitioner's contentions unpersuasive:

(a) the lack of the written consent of the assignee to the filing of a reissue of any patent as required by 37 CFR 1.172;

(b) the lack of presentation of the instant specification in the form of the printed patent in double column format as required by 37 CFR 1.173(a)(1);

(c) the lack of compliance with 37 CFR 1.173 of the amendments made herein from filing on June 11, 2003, until the filing of the instant petition; 37 CFR 1.173 governs reissue application amendments, while the amendments in the instant application were made in compliance with 37 CFR 1.121, compare *e.g.*, the amendment to the first line of the specification made on filing with the amendment to the same part of the specification proffered with the instant petition,

(d) the lack of a notice in the first sentence of the specification stating that more than one reissue application had been filed and their relationship, as required by 37 CFR 1.177(a);

(e) the lack of the presence of each, much less any, of the original patent claims, bearing the same number as in the patent being reissued, per 37 CFR 1.177(b),

(f) the lack of the numbering of any claim herein following the numerical value of the highest numbered original patent claim, per 37 CFR 1.177(b).

Accordingly, any contention that the USPTO erred in failing to recognize that this application was intended, as now alleged by applicant, to be both a divisional AND a reissue – must fall of its own weight.

As to petitioner's belated request for extraordinary relief to convert the instant application to a reissue application, consideration of all the circumstances of this case mitigates against the requested conversion.

Initially, petitioner's failure to identify this application as both a divisional and a reissue, prior to the issuance of the first reissue application, operated to preclude the USPTO from exercising its discretion to then stay the issuance of the first '639 reissue application, or even merge the '639 and *inter alia*, the instant '198 applications pursuant to 37 CFR 1.177(c), assuming for the sake of argument this application will be regarded by the USPTO a reissue application.[1]

Of further relevance to the request for extraordinary relief is that the USPTO has been denied such discretion due to petitioner's own failure to know and apply the rules of practice applicable to reissue applications in general, and, in particular, the rules of practice specific to reissue applications that are also divisional. Further, such lack or

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[1] See Ex parte Johnson, 117 USPQ 412 (Pat. Off. Bd. App. 1956) ``the practice under [Rule 177] ... has been for the Commissioner or some official delegated by him to write a memorandum to the examiner directing what action should be taken insofar as the separation of the original patent into several reissue patents is concerned."

knowledge of, or misapplication of the rules of practice has led to his current alleged predicament.[2] However, such is not an adequate basis for seeking, much less obtaining, extraordinary relief. The extraordinary remedy provisions of the rules of practice should not be considered a panacea for tactical errors in prosecution. See Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party or his representative makes an avoidable mistake in filing or not filing papers); Vincent v. Mossinghoff, 230 USPQ 621, 625 (D.D.C. 1985)(petitioner's failure to take adequate notice of USPTO procedures will not be permitted to shift, in equity, his lack of diligence onto the USPTO.

Rather, the alleged failure to comply with the rules specific to applications for reissue in general, and with the rules specific to divisional applications that are also for reissue, is an oversight that could have been avoided by the exercise of reasonable care and diligence; thus, such is not a circumstance beyond the control of petitioner warranting waiver of the rules. See Nitto, supra (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant priority filing date to patent application was not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (counsel's unawareness of 37 CFR 1.8 is not an extraordinary situation warranting waiver of a rule). The Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and a petitioner/party is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987); Stevens v. Tamai, 70 USPQ2d 1765 (Fed. Cir. 2004)(court denying priority due to counsel's admitted failure to follow the Rules of Practice of the USPTO). Further, it is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or other extraordinary relief. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995). Circumstances resulting from petitioner's, or petitioner's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the

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[2]Because the USPTO regulations are published in the Federal Register as required by the Federal Register Act, 44 U.S.C. §1505 (formerly 44 U.S.C. §§5, 7), they are binding, even in the absence of actual knowledge. See, *e.g.*, Timber Access Industries Co. v. United States, 213 Ct. Cl. 648, 553 F.2d 1250, 1255 (1977); Andrews v. Knowlton, 509 F.2d 898, 905 (2d Cir.), cert. denied, 423 U.S. 873 (1975); United States v. Aarons, 310 F.2d 341, 345-48 (2d Cir. 1962); In re Pacific Far East Line, Inc., 314 F.Supp. 1339, 1348 (N.D. Cal. 1970), aff'd, 472 F.2d 1382 (9th Cir. 1973).

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).

Moreover, petitioner's lack of diligence in this matter also operates against any favorable treatment of his request. In this regard, the filing receipt mailed July 31, 2003, apprised petitioner that he had filed a divisional application; it did not apprise petitioner that he had filed an application that was both a divisional of the '639 application and a reissue of the '607 patent. Still further, the Notice of Publication of Application mailed November 5, 2003, advised petitioner that this application would be published on November 6, 2003, as US-2003-0207506-A1. As such, the patent owner (applicant) long ago knew, or should have known, that he hd not filed a reissue application, since a reissue application is not subject to pre-grant publication. See 37 CFR 1.211(b) and the first paragraph of MPEP 1441.01. Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983). The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence of his delay. See Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378, 379 (Comm'r Pat. 1968) and Williams v. The Five Platters, Inc., 510 F.2d 963, 184 USPQ 744 (CCPA 1975). Indeed, patent owner/applicant was content with the USPTO treatment of this, and several similarly situated non reissue divisional applications, until the original patent was applied to reject the claims in these applications under the rationale set forth in the In re Bauman decision.

Further, the public has had since November 6, 2003, to rely on the fact that the above-identified published application, for this case, was facially not an application for reissue, much less a broadening application for reissue; it was merely a divisional application of its parent '639 application. As a general rule, public policy does not favor the restoration to the applicant of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner, *e.g.*, intervening rights in the case of a reissue patent. See Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935); Wollensak v. Reiher, 115 U.S. 96 (1885). Here, the applicant/patent owner dedicated to the public the right to file the instant application a divisional application for reissue as well as a divisional application of a reissue, since the public observed the filing of a divisional that was not a reissue application. Petitioner fails to advance any explanation for the protracted delay in this matter, which could mitigate toward a favorable consideration of the request, for the reasons noted above. Furthermore, petitioner does not explain how the rights of the public will be protected if this non-reissue divisional is converted to become a divisional of the '639 application as well as a reissue of the '607 patent, such that the current statutory bar on the claims herein would be obviated. Rather, the publication of the above-identified application as a non-reissue divisional was proper, and clearly did not

put the public on notice that applicant was seeking a further broadening reissue herein, which under 35 U.S.C. § 120 would have an effective filing date within the 2 year limit for filing a broadening reissue application per 35 U.S.C. § 251. Rather, that publication only noticed the public on November 6, 2003, that a Bauman type non-reissue continuing [divisional]application had been filed on June 11, 2003. As the court observed in In re Graff, 42 USPQ2d 1471 at (Fed Cir 1997):

> "[T]he interested public is entitled to rely on the absence of a broadening reissue application within two years of grant of the original patent."

Here, the public had notice that a single broadening reissue had been filed within 2 years of the grant of the original patent; the public **did not have notice** that another broadening divisional **reissue** claiming 35 U.S.C. § 120 benefit of the prior broadening reissue filed within 2 years of the patent grant, had also been filed. The public only had notice that a non-reissue divisional application had been filed. However, the reissue statute balances the purpose of providing the patentee with an opportunity to correct errors of inadequate claim scope, with the public interest in finality and certainty of patent rights. See Wollensak supra, at 100 ("[N]o one should be relieved who has slept upon his rights, and has thus led the public to rely on the implied disclaimer involved in the terms of the original patent.") Not until applicant filed the instant petition and clarifying amendment under 37 CFR 1.177(a) did he begin to seek a true divisional application that was also a reissue of the '609 patent.[3] But see In re Dien, 680 F.2d at 154, 214 USPQ at 14 (court observing that appellant had not thus far really asked for a reissue application, and was not now going to get such a reissue application approved); In re Fotland, 779 F2d. 31, 228 USPQ 193 (Fed. Cir. 1985) (applicant refused reissue where he had not met requirements for a "true reissue"within the time limit for filing a claim-broadening reissue). Here, for the reasons given above, that balance is found in favor of the public interest in finality and certainty of claim scope by refusing the requested relief.

This application is being referenced to the Technology Center for continued treatment as a non-reissue divisional application.

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[3] While the belated amendment to the first line of the specification constitutes applicant's initial attempt at compliance with 37 CFR 1.177(a), almost 2 years after the publication date, indicated above as item (d), items (a) through (c), (e), and (f) also noted above remain unsatisfied. Petitioner should not assume from the foregoing that even if total compliance with the applicable regulations represented by the aforementioned items (a) through (c), (e), and (f) is hereafter sought, that any renewed petition would be favorably considered.

Any request for reconsideration of this decision should be addressed as follows:

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Post Office Box 1450
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Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

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OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA VA 22320

In re Application of:
Satou
Application No. 10/458,198
Filed: June 11, 2003
PGPUB: US200302207506A1 11/6/03.
Docket No.: 039280.97

: ON PETITION

This is a decision on the petition filed January 10, 2006, requesting under 37 CFR 1.182 that the USPTO convert the above-identified application to an application that is both a divisional and a reissue having the same filing date, from its current status as that of a divisional, but non-reissue, application.

The petition is **denied**.

BACKGROUND

Original application for patent no. 08/849,288 entered the national stage in the United States under 35 U.S.C. § 371 on May 30, 1997, from international application no. PCT/JP96/02858 filed October 2, 1996, and was issued in due course as U.S. Patent No. 5,930,607 ('607) on July 27, 1999.

On July 13, 2001, applicant filed an application given the control no. 09/903,639 ('639) which in, *inter alia*, its transmittal letter, reissue declaration, consent of the assignee to the filing of a reissue, request for transfer of drawings from the original patent to the reissue, claim for priority, as well as by way of presentation of the specification in the form of the printed patent in double column format as required by 37 CFR 1.173(a)(1), the presence of each of the original patent claims, bearing the same number as in the patent being reissued, per 37 CFR 1.177(b), and the numbering of claims following the numbering of the highest numbered original patent claim, per 37 CFR 1.177(b), with the underlining of each newly present claim in the manner required by 37 CFR 1.173(b), clearly and unambiguously sought to reissue the '607 patent. As the error given in the reissue declaration was that the patent claimed less than the inventor had a right to claim in that the original patent claims patent were unduly limited, and as the reissue application was filed within 2 years of the original patent issue date, applicant filed a broadening reissue that included, as filed 15 new claims.

On September 19, 2001, the USPTO mailed a filing receipt in the '639 reissue application to counsel, which was received on September 21, 2001, by counsel. The filing receipt included the caveat that applicant was to verify the accuracy of the data presented on the receipt.

On October 16, 2001, pursuant to 37 CFR 1.11(b), an *Official Gazette (O.G.)* notice informed the public that the '639 application had been filed to reissue the '607 patent.

On October 24, 2001, applicant filed a request in the '639 reissue application, per the above-noted caveat, for correction of the spelling of the inventor's first name to now include the last letter of the given name.

On April 11, 2003, the examiner mailed a Notice of Allowance in the '639 reissue application.

On June 6, 2003, applicant paid the issue fee in the '639 reissue application.

On June 11, 2003, the above-identified divisional application ('198) was filed, using, as permitted by 37 CFR 1.63(d)(iv), the declaration from the '639 parent case, which necessarily also complied with 37 CFR 1.63. As indicated in more detail below, applicant's did not comply with any of the regulations specific to reissue applications in general, much less to those regulations specific to an application that is both a divisional and a reissue.

On July 31, 2003, the USPTO mailed a filing receipt in the instant '198 application. The filing receipt included the caveat that applicant was to verify the accuracy of the data presented on the receipt. The filing receipt apprised applicant that he had filed a divisional application of the '609 reissue application; it did not apprise applicant that he had filed an application that was both a divisional of the '639 reissue application and a reissue of the '607 patent.

On October 28, 2003, the '639 reissue application was issued as RE38,292 with 18 additional claims over those issued in the original '607 patent.

On November 5, 2003, the USPTO mailed a Notice of Publication of Application that advised applicant that the instant '198 divisional application would be published on November 6, 2003, as US-2003-0207506-A1.

On November 6, 2003, the above-identified '198 divisional application was published as indicated immediately above.

On October 27, 2005, applicant filed a petition under 37 CFR 1.182 requesting that the USPTO convert the above-identified application to an application that is both a divisional and a reissue having the same filing date, from its current status as that of a divisional, but non-reissue, application.

The petition was dismissed in the decision of November 10, 2005.

The instant renewed petition was filed January 10, 2006.

PREVIOUS OPINION

Petitioner complains that the above-identified application "is presently erroneously being treated by the Patent Office as a [non-reissue] divisional application of Reissue Patent No. RE38,292 issued October 28, 2004 [from] application No. 09/903,639('639) filed July 13, 2001." Petitioner notes that under the rationale of In re Bauman, 214 USPQ 585 (CCPA 1982), the original patent No. 5,930,607('607) issued July 17, 1999, which was reissued by the parent '639 application for reissue is available against the above-identified application if it is treated as a non-reissue divisional of the '639 application, as opposed to being treated as a divisional application of the '639 application, but which likewise seeks to reissue the original '607 patent. Petitioner further asserts that it was applicant's intent to cover additional subject matter not originally claimed by using the instant application papers as a broadening reissue, but applicant is now barred (under 35 U.S.C. § 102(b)) from obtaining such broadening claims if this application is not treated as a reissue.

Inspection of the record of this application fails to support applicant's contention that the USPTO has "erroneously" treated this application as any thing other than a non-reissue

divisional application, and even more importantly, that petitioner has previously considered the instant application as a divisional reissue of the original '607 patent, or even an application for reissue of RE38,292, or that petitioner was diligent in seeking to correct his alleged filing error, or the alleged error of the USPTO.

Initially, petitioner points to the reissue declaration from the parent reissue application that was present on the filing of the instant application, as evidence of his intent to here file a divisional and reissue application. However, as 37 CFR 1.63(d)(iv) expressly authorizes re-submission of the declaration from a parent application when a divisional application is filed, the presence of the declaration from the parent application did not establish that petitioner was also seeking reissue by way of this divisional application. Rather, any reissue oath must necessarily also satisfy the requirements of 37 CFR 1.63, which applies to all declarations. See 37 CFR 1.175(a). Likewise, the amendment to the first line of the specification was consistent with the filing of a Bauman-type non-reissue, divisional application *per se* from a prior reissue application, and did not inform the USPTO, as required by 37 CFR 1.177(a), that this application was but one of a plurality of divisional reissues being sought for a single patent.

Indeed, what was conspicuously absent herein on filing are those indicia of the fact that a reissue has been filed (compare the contents of the '639 reissue application as filed with the contents of the instant application as filed) and furthermore, those indicia of the fact that an application that was both a divisional of the '639 application and also a reissue of the '607 patent had been filed, renders petitioner's contentions unpersuasive:

> (a) the lack of the written consent of the assignee to the filing of a reissue of any patent as required by 37 CFR 1.172;
> (b) the lack of presentation of the instant specification in the form of the printed patent in double column format as required by 37 CFR 1.173(a)(1);
> (c) the lack of compliance of the amendments made herein from filing on June 11, 2003, until the filing of the instant petition with 37 CFR 1.173, which governs reissue applications; rather the amendments were made in compliance with 37 CFR 1.121, compare *e.g.*, the amendment to the first line of the specification made on filing with the amendment to the same part of the specification proffered with the instant petition;
> (d) the lack of a notice in the first sentence of the specification stating that more than one reissue application had been filed and their relationship, as required by 37 CFR 1.177(a);
> (e) the lack of the presence of each, much less any, of the original patent claims, bearing the same number as in the patent being reissued, per 37 CFR 1.177(b),
> (f) the lack of the numbering of any claim herein following the numbering of the highest numbered original patent claim, per 37 CFR 1.177(b).

Accordingly, any contention that the USPTO erred in not recognizing that this application was intended, as now alleged by applicant, to be both a divisional AND a reissue must fall of its own weight.

As to petitioner's belated request for extraordinary relief, consideration of all the circumstances of this case mitigates against the requested conversion.

Initially, petitioner's failure to identify this application as both a divisional and a reissue, prior to the issuance of the first reissue application, operated to preclude the USPTO from exercising its discretion to then stay the issuance of the first '639 reissue application, or even merge the '639 and *inter alia*, the instant '198 applications pursuant to 37 CFR 1.177(c), assuming for the sake

of argument this application will be regarded by the USPTO a reissue application.[1] Of further relevance to the request for extraordinary relief is that the USPTO has been denied such discretion due to petitioner's own failure to know and apply the rules of practice applicable to reissue applications in general, and, in particular, the rules of practice specific to reissue applications that are also divisional. Further, such lack or knowledge of, or misapplication of the rules of practice has led to his current alleged predicament.[2] However, such is not an adequate basis for seeking, much less obtaining, extraordinary relief. The extraordinary remedy provisions of the rules of practice should not be considered a panacea for tactical errors in prosecution. See Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party or his representative makes an avoidable mistake in filing or not filing papers). Rather, as the alleged failure to comply with the rules specific to applications for reissue in general, and to the rules specific to divisional applications that are also for reissue is an oversight that could have been avoided by the exercise of reasonable care and diligence, such is not a circumstance beyond the control of petitioner warranting waiver of the rules. See Nitto, supra (Commissioner's refusal to waive requirements of 37 C.F.R. 1.10 in order to grant priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of 37 C.F.R. 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 C.F.R. 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (counsel's unawareness of 37 C.F.R. 1.8 not extraordinary situation warranting waiver of a rule). The Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and petitioner is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992);Stevens v. Tamai, 70 USPQ2d 1765 (Fed. Cir. 2004)(court denying priority due to counsel's admitted failure to follow the Rules of Practice of the USPTO). Further, it is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or other extraordinary relief. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995). Circumstances resulting from petitioner's, or petitioner's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc., 195 USPQ 586, 588 (Comm'r Pats. 1977).

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[1] See Ex parte Johnson, 117 USPQ 412 (Pat. Off. Bd. App. 1956) ``the practice under [Rule 177] ... has been for the Commissioner or some official delegated by him to write a memorandum to the examiner directing what action should be taken insofar as the separation of the original patent into several reissue patents is concerned."

[2]Because the USPTO regulations are published in the Federal Register as required by the Federal Register Act, 44 U.S.C. §1505 (formerly 44 U.S.C. §§5, 7), they are binding, even in the absence of actual knowledge. See, *e.g.*,Timber Access Industries Co. v. United States, 213 Ct. Cl. 648, 553 F.2d 1250, 1255 (1977); Andrews v. Knowlton, 509 F.2d 898, 905 (2d Cir.), cert. denied, 423 U.S. 873 (1975); United States v. Aarons, 310 F.2d 341, 345-48 (2d Cir. 1962); In re Pacific Far East Line, Inc., 314 F.Supp. 1339, 1348 (N.D. Cal. 1970), aff'd, 472 F.2d 1382 (9th Cir. 1973).

Moreover, petitioner's lack of diligence in this matter also operates against any favorable treatment of his request. In this regard, the filing receipt mailed July 31, 2003, apprised petitioner that he had filed a divisional application; it did not apprise petitioner that he had filed an application that was both a divisional of the '639 application and a reissue of the '607 patent. Still further, the Notice of Publication of Application mailed November 5, 2003, advised petitioner that this application would be published on November 6, 2003, as US-2003-0207506-A1. As such, petitioner long ago knew, or should have known, that he had not filed a reissue application, since reissue applications are not subject to pre-grant publication. See 37 CFR 1.211(b). Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983). The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence of his delay. See Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378, 379 (Comm'r Pat. 1968) and Williams v. The Five Platters, Inc., 510 F.2d 963, 184 USPQ 744 (CCPA 1975). Indeed, petitioner was content with the USPTO treatment of this and several similarly situated non reissue divisional applications until the original patent was applied to reject the claims in these applications claims under the rationale of In re Bauman.

Likewise, the public has had since November 6, 2003, to rely on the fact that the above-identified published application was facially not an application for reissue, much less one of a plurality of broadening reissue applications for the '607 patent; it was merely a Bauman-type divisional application. As a general rule, public policy does not favor the restoration to the applicant of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner, *e.g.*, intervening rights in the case of a reissue patent. See Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935); Wollensak v. Reiher, 115 U.S. 96 (1885). Here, petitioner dedicated to the public his opportunity to file a plurality of broadening divisional reissue applications that likewise sought to reissue the '607 patent during the pendency of the '639 reissue application. Petitioner fails to advance any explanation for his lack of diligence in this matter, which mitigates away from favorable consideration of the request, for the reasons noted above. Furthermore, petitioner does not explain how the rights of the public will be protected if this non-reissue divisional is now converted to a divisional of the '639 application as well as a reissue of the '607 patent, such that the current statutory bar on the claims herein arising under Baumann would be obviated. Rather, the publication of the above-identified application as a non-reissue divisional was proper, and clearly did not put the public on notice that applicant was seeking a further broadening reissue herein, which under § 120 would have an effective filing date within the 2 year limit for filing a broadening reissue application per 35 U.S.C. § 251. Rather, that publication only noticed the public on November 6, 2003, that a Baumann type non-reissue continuing [divisional] application had been filed on June 11, 2003. As the court observed in In re Graff, 42 USPQ2d 1471 at (Fed Cir 1997):

> "[T]he interested public is entitled to rely on the absence of a broadening reissue application within two years of grant of the original patent.

Here, the public had notice that a single broadening reissue had been filed within 2 years of the grant of the original patent, but the public did not have notice that another broadening divisional reissue claiming § 120 benefit of the prior broadening reissue filed within 2 years of the patent grant, had also been filed. The public only had notice that a non-reissue divisional application had been filed. However, the reissue statute balances the purpose of providing the patentee with an opportunity to correct errors of inadequate claim scope, with the public interest in finality and certainty of patent rights. See Wollensak supra, at 100 ("[N]o one should be relieved who

has slept upon his rights, and has thus led the public to rely on the implied disclaimer involved in the terms of the original patent.") Not until applicant filed the instant petition and clarifying amendment under 37 CFR 1.177(a) did he begin to seek a true divisional application that was also a reissue of the '609 patent.[3] But see In re Dien, 680 F.2d at 154, 214 USPQ at 14 (court observing that appellant had not thus far really asked for a reissue, and was not now going to get such a reissue approved); In re Fotland, 779 F2d. 31, 228 USPQ 193 (Fed. Cir. 1985) (applicant refused reissue where he had not met requirements for a "true reissue"within the time limit for filing a claim-broadening reissue). However, petitioner's initial lack of compliance with the applicable rules for filing a divisional and a reissue, and subsequent failure to act diligently to seek this requested conversion before the termination of proceedings on the '639 reissue application weigh heavily against petitioner. For the reasons given above, that balancing of the interests of the patentee with that of the public should here be found in favor of the public interest in finality and certainty of claim scope by refusing the requested relief.

OPINION RE: RENEWED PETITION

Petitioner requests reconsideration and asserts that (1) contrary to the positions taken above by the USPTO re [lack of] public notice, and [lack of] diligence, the public was put on notice, upon the instant pre grant publication on November 6, 2003, that applicant was continuing to seek to correct errors of inadequate claim scope in the original patent, and (2) petitioner has acted with diligence since at least June 27, 2005 to correct the matter.

Petitioner is reminded that 37 CFR 1.182 applies only where the other rules are inapplicable. However, 37 CFR 1.182 is not a mechanism for avoiding the requirements of the established rules and procedures. See Hicks v. Costello, 1903 Dec. Comm'r Pat. 123, 125 (1903). As shown by consideration of items (a)-(f) above, petitioner failed to follow the established rules and procedures for filing a divisional reissue application, as opposed to merely filing a non-reissue divisional application when this was filed, and was not diligent in seeking to correct his filing error. Furthermore, petitioner appears to overlook that his arguments in the amendment field October 27, 2005, regarding alleged *dicta* in, and the total inapplicability of, Bauman (as well as Conover v. Downs) to the circumstances of this application operate to undermine his contention in the petition that extraordinary relief is warranted herein.

As to item (1) above, whatever notice was given to the public by the pre grant publication of this application on November 6, 2003, that notice, by definition, simply could not have been to the effect that there was yet another reissue application seeking to broaden the claims of the original '607 patent. Applications for reissue are simply not subject to pre grant publication. Notwithstanding the total lack of compliance herein with the regulations pertaining to the filing of a reissue application, the pre grant publication of this application simply could not operate to place the public on notice that yet another broadening reissue application of the '607 patent had been filed; it only put the public on notice that a non reissue application had been filed. Petitioner also overlooks that under 37 CFR 1.11(b), the fact of filing of all reissue applications after March 1, 1977,(except for continued prosecution applications (CPA's) filed under 37 CFR 1.53(d)) is announced in the Official Gazette *(O.G.)*, and such thereafter are open to inspection

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[3] While the belated amendment to the first line of the specification constitutes applicant's initial attempt at compliance with 37 CFR 1.177(a), almost 2 years after the publication date, indicated above as item (d), items (a) through (c), (e), and (f) also noted above remain unsatisfied. Petitioner should not assume from the foregoing that even if total compliance with the applicable regulations represented by the aforementioned items (a) through (c), (e), and (f) is hereafter sought, that any renewed petition would be favorably considered.

by the general public .[4] The total lack of any *O.G.* notice whatsoever indicating that this application was yet another broadening reissue of the '607 patent further refutes petitioner's contention; regardless of the claimed subject matter presented herein, such was manifestly not placed in a divisional application for reissue of the '607 patent. Accordingly, and further for the reasons of Dien and Fotland, the interested public is here entitled to rely, and to continue to rely, upon the absence of another broadening reissue of the '106 patent in addition to the '639 reissue application, which issued as RE38,292. Petitioner is not unduly prejudiced by this decision in that petitioner has already filed and obtained a broadening reissue of the '607 patent that was expressly filed for the purpose of correcting the error of insufficiently broad claims in the original patent, and to this end the reissue patent contained 18 additional claims.

As to item (2) above, the contention that petitioner has acted with reasonable diligence since at least June 29, 2005 is noted, but upon considering all the circumstances of this case, especially that petitioner has already obtained a broadening reissue of the '607 patent containing 18 additional claims, the requested change must be refused. Petitioner had the opportunity during the pendency of that first broadening reissue to present every claim filed herein, as well as every claim presented in the instant non reissue divisional application, for consideration in the first broadening reissue. It was unfortunate, but not beyond petitioner's control, that the instant application papers did not comply with the rules applicable to divisional applications that are also for reissue in the same manner that the application papers for the '639 reissue application complied with the rules applicable to reissue applications. It was also unfortunate, but not beyond petitioner's control, that the information on the filing receipt for instant application was not diligently scrutinized in the same manner that the filing receipt for the '639 reissue application papers was diligently scrutinized, and acted upon. Further, while petitioner asserts diligence for the last few months, the current predicament arises due to petitioner's protracted failure, since June 11, 2003, when this non reissue divisional application was filed, to know and apply the rules applicable to divisional reissues, and the interested public had since then to rely upon the absence of yet another divisional broadening reissue of the'106 patent. Applying the sentiments of the Fotland and Graff courts to this case, petitioner is properly refused the requested relief as petitioner did not meet the requirements for a true broadening divisional reissue within the time limit[5], during the pendency of the first broadening reissue application,

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[4] The announcement gives interested members of the public an opportunity to submit to the examiner information pertinent to the patentability of the reissue application. The announcement includes the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and the Technology Center (TC) to which the reissue application is initially assigned. IFW reissue application files are open to inspection by the general public by way of Public PAIR via the USPTO Internet site. In viewing the images of the files, members of the public will be able to view the entire content of the reissue application file history. To access Public PAIR, a member of the public would go to the USPTO web site at http://www.uspto.gov. However, this application was only publicly viewable upon its pre grant publication.

[5] The original '607 patent issued July 27, 1999. Pursuant to 35 U.S.C. § 251, any broadening reissue had to be filed on or before July 27, 2001, or be filed, *ab initio* as a broadening reissue that itself claimed benefit under 35 U.S.C. § 120 of a broadening reissue filed on or before July 27, 2001. The '639 broadening reissue was filed July 13, 2001. This non reissue divisional, filed June 11, 2003, was thus copending with the '639 reissue which issued October 28, 2003. Petitioner had ample to time correct his non reissue filing error to avoid the use of his original patent issued July 27, 1999 as a reference against any claim where that

and petitioner compounded his initial filing error when the instant non reissue divisional application was filed on June 11, 2003. It is incumbent upon an applicant to prosecute his invention with continuing diligence and an acute awareness of the statute. See BEC Pressure Controls Corporation v. Dwyer Instruments, Inc., 380 F.Supp. 1397, 1399, 182 USPQ 190, 192 (D.C. N.Ind. 1974). Having failed to diligently take appropriate action to secure additional broadened claim coverage during the prosecution of the original reissue application, much less to secure the proper filing of a copending divisional application that were also intended to be an applications for reissue of the original '106 patent, petitioner cannot now be heard to complain as the window for presentation of such claims and reissue applications has long been closed. See Bauman at 590 (holding that a non reissue continuation of a prior reissue application is entitled to the benefit of the filing date of the prior reissue application under 35 U.S.C. § 120). That is, as petitioner did not really ask for any additional broadening divisional reissue application(s) during the period from June 11, 2003, to June 27, 2005, the instant request comes far too late. See Dien, supra, see also Wollensak, supra.

DECISION

For the reasons given above, and balancing of the interests of the patentee with that of the public, that balance will be found in favor of the public interest in the finality and certainty of claim scope by refusing the requested relief herein as it has also been refused in the non reissue divisional of this application: application No.11/006,568 filed December 8, 2004 . The petition is **denied.** This application will continue to be treated by the USPTO as a non reissue division application.

This decision may be considered a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002. The USPTO will not further consider or reconsider this matter.

This application is being referenced to the Technology Center for continued treatment as a non-reissue divisional application.

Telephone inquiries related to this communication should be directed to Petitions Examiner Brian Hearn at (571) 272-3217.

Charles Pearson, Director
Office of Petitions

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claim, as here, is found in a non reissue divisional application that is limited by 35 U.S.C. §120 to a filing date of June 11, 2003.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 9, 2006

TO SPE OF : ART UNIT 3754

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/458210 Patent No.: 7,004,359

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: The change in col 3 line 66 changing "valve stem 36" to "valve stem 35" should be made in the spec because 36 is a nozzle, but there is no element 35 in the drawings. Fig. 1 should be corrected to change "36" adj "12" to --35--.

SPE

3754
Art Unit

SPE: G. Epps.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/3/06

TO SPE OF : ART UNIT 2878

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/458,262 Patent No.: 7075049

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.

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Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

Georgia Y Epps
SPE

2878
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20090219

DATE : February 19, 2009

TO SPE OF : ART UNIT 1793

SUBJECT : Request for Certificate of Correction on Patent No.: 7004371

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: Stanley Silverman **Art Unit** 1793

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/23/08

TO SPE OF : ART UNIT 3700

SUBJECT : Request for Certificate of Correction on Patent No.: 7004371

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Palm location 7580, Certificates of Correction Branch – South Tower – 9A22
If response is for an IFW, return to employee (named below) via PUBSCofC Team in MADRAS.
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ Approved — All changes apply.
- ☐ Approved in Part — Specify below which changes do not apply.
- ☐ Denied — State the reasons for denial below.

Comments:

_____

_____

_____

_____

_____

_____ SPE

_____ Art Unit

Cofc

WORKMAN | NYDEGGER
INTELLECTUAL PROPERTY ATTORNEYS

1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE | SALT LAKE CITY, UTAH 84111
TEL: (801) 533-9800 | FAX: (801) 328-1707 | WWW.WNLAW.COM

OIPE IAP13
APR 28 2008
PATENT & TRADEMARK OFFICE

Patent Docket No. 17389.193

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

	Hou-Ging Chin
Serial No.:	10/458,266
Filed:	Jun. 11, 2003
For:	GRIPPER AND METHOD FOR DETACHING PACKAGED CHIP FROM PCB
Examiner:	Colleen P. Cook
Patent No.:	7,004,371 B2
Issue Date:	Feb. 28, 2006

Art Unit
1754

REQUEST FOR A CERTIFICATE OF CORRECTION
UNDER 37 C.F.R. § 1.323

Attn: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313–1450

Certificate
APR 30 2008
of Correction

Sir:

In accordance with the provisions of 37 C.F.R. § 1.323 which implement 35 U.S.C. § 255, the Commissioner is respectfully requested to issue a Certificate of Correction to correct mistakes in the above-identified patent. The enclosed Patent Office Form 1050 reflects the desired corrections. Also enclosed please find a Form PTO-2038 or Check No. 157596 in the amount of $100.00 to cover the costs for issuance of this certificate.

04/28/2008 SSESHE1 00000048 7004371
01 FC:1811 100.00 OP

RECEIVED-USPTO
Patent Publication
APR 30 2008

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 23–3178. Duplicate copies of this letter are enclosed.

Dated this 18 day of April, 2008

Respectfully submitted,

R. Burns Israelsen
Attorney for Patentee
Registration No. 42,685
Customer No. 022913

RBI:jsb
Docket No. 17389.193
PR0000002826V001

CERTIFICATE OF DEPOSIT UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, on this 24 day of April, 2008.

Transmitted: REQUEST FOR A CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.323, PTO Form 1050 and Form PTO-2038 or Check No. 157596 for $100.00

RECEIVED-USPTO
Patent Publication
APR 30 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

MARGER JOHNSON & McCOLLOM PC
1030 S.W. MORRISON STREET
PORTLAND, OR 97205

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JUL 3 0 2004

OFFICE OF PETITIONS

In re Application of
Sang-Mun Chon et al
Application No. 10/458,341
Filed: June 9, 2003
Attorney Docket No. 4591-320

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition, filed July 27, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on June 25, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3743 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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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MORRISON & FOERSTER, LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

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NOV 27 2007

OFFICE OF PETITIONS

In re Application of :
Jean-Pierre LECOMTE, et al :
Application No. 10/458,376 : DECISION ON PETITION
Filed: June 11, 2003 : TO WITHDRAW
Attorney Docket No. 449122057600 : 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 31, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison & Foerster, LLP, has been revoked by the assignee of the patent application on September 21, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

Telephone inquires concerning this decision should be directed to Diane Goodwyn at 571-272-6735.

April Wise
Petitions Examiner
Office of Petitions

cc: LERNER GREENBERG STEMER, LLP
P.O. BOX 2480
HOLLYWOOD, FL 3302202480

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/458,376	06/11/2003	Jean-Pierre Lecomte	449122057600

CONFIRMATION NO. 1945

24131
LERNER GREENBERG STEMER LLP
P O BOX 2480
HOLLYWOOD, FL 33022-2480

OC000000026201610

Date Mailed: 10/09/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/21/2007.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
ATTORNEY/APPLICANT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/458,376	06/11/2003	Jean-Pierre Lecomte	449122057600

CONFIRMATION NO. 1945

OC000000026201609

25227
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

Date Mailed: 10/09/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/21/2007.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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BILL & MARY LOU, INC.
101 LOMBARD STREET #510 W
SAN FRANCISCO, CA 94111

MAILED

NOV 13 2009

OFFICE OF PETITIONS

In re Application of :
Marc A. Meyer, et a.. :
Application No. 11/458,382 : DECISION ON PETITION
Filed: July 18, 2006 : TO WITHDRAW
Attorney Docket No. 06-0069 : FROM RECORD
:

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 4, 2009.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Bill & Mary Lou, INC. has been revoked by the assignee of the patent application on September 8, 2009. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: BUZZZLOGIC, INC.
COOLEY GODWARD KRONISH, LLP
777 6TH STREET NW
SUITE 1100
WASHINGTON, DC 20001

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.

JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA GA 30309

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FEB 23 2004

OFFICE OF PETITIONS

In re Application of :
Thors et al. : DECISION ON PETITION
Application No. 10/458,398 :
Filed: June 10, 2003 :
Attorney Docket No. 46315/263951 :

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.182," filed October 6, 2003. Petitioner requests that the Office accept the filing of replacements Figures 12 and 13 and maintain applicants' filing date of June 10, 2003.

Application papers in the above-identified application were received on June 10, 2003. However, on August 11, 2003, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Nonprovisional Application," notifying applicants *inter alia* that the application papers had been accorded a filing date; however, figures 12 and 13 described in the specification appeared to have been omitted from the application.

In reply, applicants filed the instant petition. Petitioners argue that on August 29, 2003 they responded to the Notice by providing an executed declaration which included a claim of priority to U.S. Serial No. 60/387,328. Furthermore, on September 30, 2003, they filed a Preliminary Amendment amending the application to include the cross-reference to U.S. Provisional Application 60/387,328 and the phrase "incorporated herein by reference." Applicants have now responded to the Notice with copies of the "allegedly" missing drawings.

Applicants' arguments and evidence have been considered, but not found persuasive. Applicants have not established that figures 12 and 13 were among the papers present in the application on filing. The application file is the official record of the papers received in an application. A review of the application file reveals that figures 12 and 13 were not among the papers received in the Office on filing, as those papers are not present in the application with a date of receipt of June 10, 2003. Application papers not present in the application on filing cannot be considered received in the Office on the date of filing, regardless of the inadvertence of the omission. Thus, the application as deposited without figures 12 and 13 is not entitled to a filing date of June 10, 2003 with figures 12 and 13 considered a part of the original application disclosure.

Furthermore, the record does not support the conclusion nor have applicants shown that the application-as-filed included a proper incorporation by reference statement such that applicants would be permitted to amend the application to include the inadvertently omitted figures. Applicants are not entitled to a filing date of June 10, 2003 with figures 12 and 13 considered a part of the original application disclosure by the attempted incorporation by reference set forth in the subsequently filed claim of priority to U.S. Provisional Application No. 60/387,328.

MPEP 201 specifically provides that:

> 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 Indus. v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980).

Accordingly, replacement figures 12 and 13 are not accepted.

Nonetheless, the application may maintain its filing date without figures 12 and 13.

The application with the presently accorded filing date of June 10, 2003, using the papers received in the Office on that date, is being forwarded to Technology Center 3743 for examination in due course. (Figures 12 and 13 are not considered part of the original application disclosure).

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 30 2007

Commissioner for Patents
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WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

In re Application of	:
Atul M. Mehta et al	:
Serial No.: 10/458,451	: PETITION DECISION
Filed: June 10, 2003	:
Attorney Docket No.: CELG-0364	:

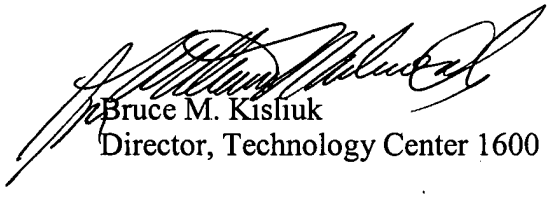
This is in response to the petition under 37 CFR 1.59(b), filed March 28, 2007, to expunge a Proprietary Information Disclosure Statement from the above identified application.

Petitioner requests that documents submitted with the petition as a Proprietary Information Disclosure Statement (PIDS) be expunged from the record. 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 information submitted as proprietary material was submitted in accordance with M.P.E.P. 724 but was inadvertently added to the IFW file and was briefly available to the public. Upon discovery of the scanning of the material it was made unavailable to the public by closing it to public access. The scanning error is regretted. The original documents, since they were scanned, cannot be returned to applicants. The material will remain available to the examiner for consideration. By closing the material to public access the material is effectively expunged and no further petition to expunge will be needed.

The petition is **GRANTED** to the extent indicated.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at general Office facsimile number.



Bruce M. Kisliuk
Director, Technology Center 1600

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RICHMOND, HITCHCOCK, FISH & DOLLAR
P. O. BOX 2443
BARTLESVILLE, OK 74005

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FEB 28 2007

OFFICE OF PETITIONS

In re Application of :
Daniel J. Eck :
Application No. 10/458,463 : DECISION ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. 34097US(KDK) :

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 **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 13, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed June 13, 2006. Accordingly, the date of abandonment of this application is June 14, 2006. A Notice of Abandonment was mailed on July 25, 2006, subsequent to the filing of the present petition to revive.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,400 and the publication fee of $300, (2) the petition fee of $1,500; and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.

Frances Hicks
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 13, 2009

TO SPE OF : ART UNIT 2193
SUBJECT : Request for Certificate of Correction for Appl. No.: 10/458475 /7496619

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please check claims

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

Magdalene Talley
Certificates of Correction Branch
703-308-9390 ext. 120

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

TMai 11/25/2009

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

LEWIS A. BULLOCK, JR.
SUPERVISORY PATENT EXAMINER

SPE 2193 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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Neil J. Coig
2355 Drusilla Lane
Baton Rouge, LA 70809

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OCT 2 8 2005

OFFICE OF PETITIONS

In re Application of	:	
John E. Prevost, et al	:	
Application No. 10/458,480	:	ON PETITION
Filed: June 10, 2003	:	
Attorney Docket No. 8482.005	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 25, 2005, 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) under 37 CFR 1.114; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

This application is being revived for consideration of the RCE.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being referred to Technology Center 1700.

Marianne E. Jenkins
Petitions Examiner
Office of Petitions

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NEIL J. COIG
2355 DRUSILLA LANE
BATON ROUGE LA 70809

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APR 12 2007

OFFICE OF PETITIONS

In re Application of
John E. Prevost et al.
Application No. 10/458,480
Filed: June 10, 2003
Attorney Docket No. 8482.005

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3) filed May 30, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed non-provisional application 10/008,834.

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.

In response to the non-Final Office Action mailed February 24, 2006, petitioner submits a priority claim to claim priority to application no. 10/008,834. The response submitted concurrently with the instant petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the priority claim is not in the proper form and must be in an amendment, not physically part of any other document as the response 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.

Additionally, 37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a

continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) as it only states that application no. 10/458,450 claims priority benefit to U.S. Serial No. 10/008,834 filed on November 9, 2001 which was a continuation of U.S. Serial No. 09/229,786, therefore it is unacceptable. The amendment also fails because the instant application is a continuation in part to application no. 09/229,286, not 09/229,786 as is indicated in the petition and the amendment. Please be careful to cite the correct application number in either an Application Data Sheet or substitute amendment.

Finally, the rule at 37 CFR § 1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §1.78(a)(3). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

Before the petition under 37 CFR §§ 1.78(a)(3) 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 or 37 CFR 1.76(b)(5)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By fax: (571) 273-8300
ATTN: Office of Petitions

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Ira Lazarus
Supervisory Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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2355 DRUSILLA LANE
BATON ROUGE LA 70809

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JUN 21 2007

OFFICE OF PETITIONS

In re Application of
John E. Prevost et al.
Application No. 10/458,480
Filed: June 10, 2003
Attorney Docket No. 8482.005

: 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 May 7, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed non-provisional application 10/008,834.

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.

A petition filed May 30, 2006 was dismissed in a decision mailed April 12, 2007 because the priority claim was not in the proper form in that the amendment must not physically be a part of any other document and thus was not in compliance with 37 CFR 1.121, 1.52, or 1.4(c). Further, 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 amendment also failed to comply with the provisions of 37 CFR 1.78(a)(2)(i) as it did not state a proper relationship and it incorrectly cited an application number. Finally, although an unintentional delay statement was provided, it varied in the language required by 37 CFR § 1.78(a)(3) and thus the entire delay was construed as the statement required by 37 CFR §1.78(a)(3).

Comes now petitioner with the instant renewed petition and amended specification.

The reference to add the prior-filed application on page one following the first sentence of the specification is still not accceptable as drafted since it improperly incorporates by reference the prior-filed application. 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).

The specification provided on filing did not incorporate by reference non-provisional application 10/008,834 as does the amendment filed.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition and either an Application Data Sheet (37 CFR 1.76(a)(5)) or a proper amendment (complying with the provisions of 37 CFR 1.121) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Shirene W Bradley for.
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

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AUG 0 6 2007

OFFICE OF PETITIONS

NEIL J. COIG
2355 DRUSILLA LANE
BATON ROUGE LA 70809

In re Application of
John E. Prevost et al.
Application No. 10/458,480
Filed: June 10, 2003
Attorney Docket No. 8482.005

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the second renewed petition under 37 CFR 1.78(a)(3) filed July 16, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed non-provisional application 10/008,834.

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.

Petitions filed May 30, 2006 and May 7, 2007 were dismissed because the amendments were not in the proper form in compliance with 37 CFR 1.121, 1.52, or 1.4(c), in compliance with 37 CFR 1.78(a)(2)(i) as it did not state a proper relationship and it incorrectly cited an application number, the unintentional delay statement provided varied in the language required by 37 CFR § 1.78(a)(3) and thus the entire delay was construed as the statement required by 37 CFR §1.78(a)(3) and because the specification provided on filing did not incorporate by reference non-provisional application 10/008,834 as did the amendment filed.

Comes now petitioner with the second renewed petition and amended specification.

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. 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 1761 for appropriate action on the amendment filed July 16, 2007, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. 120 to the prior-filed application.

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: CORRECTED FILING RECEIPT

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/458,480	06/10/2003	1761	1380	8482.005	127	4

CONFIRMATION NO. 4048

Neil J. Coig
2355 Drusilla Lane
Baton Rouge, LA 70809

CORRECTED FILING RECEIPT

OC000000025041402

Date Mailed: 07/26/2007

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)

John E. Prevost, Slaughter, LA;
Neal A. Hammond, Woodland, CA;

Power of Attorney:

William Kiesel–25883
Bernard Meroney–37188
Lance Foster–38882
Ronald Ford Jr–39193
Michael Cromwell–42449

Domestic Priority data as claimed by applicant

This application is a CON of 10/008,834 11/09/2001 ABN
which is a CON of 09/229,286 01/13/1999 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 07/25/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/458,480

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Soy protein products and methods for producing soy protein products

Preliminary Class

426

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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **March 21,2008**

TO SPE OF : ART UNIT **1794**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10/458,480** Patent No.: **7300680 B2**

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within **7** days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

KEITH D. HENDRICKS
SUPERVISORY PATENT EXAMINER

SPE **Art Unit** 1794

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

George Likourezos, Esq.
Carter, DeLuca, Farrell & Schmidt, LLP
Suite 225
445 Broad Hollow Road
Melville, NY 11747

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AUG 23 2006
OFFICE OF PETITIONS

In re Application of Scibetta :
Application No. 10/458,485 : Decision on Petition
Filing Date: June 9, 2003 :
Attorney Docket No. 1099-3 CIP II :

This is a decision on the petition under 37 CFR 1.181, filed October 28, 2005, to withdraw the holding of abandonment.

The petition is **granted.**

A non-final Office action was mailed March 24, 2005.

The last day a reply could be filed, with payment for an extension of time, was Monday, September 26, 2005.

A reply and a request for an extension of time were filed September 26, 2005.

Prior to the reply being matched with the file, the Office mailed a Notice of Abandonment.

The application is clearly not abandoned. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 3711 will be informed of the instant decision and the reply filed September 26, 2005, will be considered by the examiner 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

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. 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. : 7,168,705

APPLICATION NO.: 10/458,485

ISSUE DATE : January 30, 2007

INVENTOR(S) : Joseph Scibetta

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:

Please replace Figures 11a-11g (sheets 12-18) with the attached Replacement Figures 11a-11g.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

George Likourezos, Esq.
Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Rd.-Suite 445
Melville, NY 11747

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.

APPROVED: /D.C./ /D.C./ 11/09/2009

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/29/09

TO SPE OF : ART UNIT 3711

SUBJECT : Request for Certificate of Correction for Appl. No.: 10458485 Patent No.: 7168705

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: _____

EUGENE KIM
SUPERVISORY PATENT EXAMINER

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE Art Unit

PAGE 2/2 * RCVD AT 11/18/2009 7:31:51 AM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/27 * DNIS:2709990 * CSID:7033059835 * DURATION (mm-ss):01-22

UNITED STATES PATENT AND TRADEMARK OFFICE

OIPE JC16
OCT 24 2003
PATENT & TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trad mark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 21

FLEHR HOHBACH TEST
ALBRITTON & HERBERT
SUITE 3400 FOUR EMBARCADERO CENTER
SAN FRANCISCO , CA 94111-4187

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AUG 1 3 2001

OFFICE OF PETITIONS

COPY
For USSN 10/458,493

In re Application of
DULUK, JEROME F., *et al.*
Application No. 09/213,990
Filed: 12/17/1998
Attorney Docket No. A-66397/JAS/

DECISION GRANTING STATUS
UNDER 37 C.F.R. §1.47(a)

This is in response to the February 14, 2001 renewed petition under 37 C.F.R. §1.47(a).

The above-identified application was filed on December 17, 1998, naming Jerome F. Duluk, Stephen L. Dodgen, Joseph P. Bratt, Matthew Papakipos, Nathan Tuck, and Richard E. Hessel as joint inventors. However, the declaration was not signed by co-inventor Papakipos. Accordingly, a notice to file missing parts (hereinafter "the notice") was mailed to the address of record on January 20, 1999.[1]

Petitioner filed his response to the notice (which included a petition for a two month extension of time and payment of all outstanding fees) on May 24, 1999. However, in a decision dated July 18, 2000, that petition was dismissed for failure to show that the nonsignor refuses to sign. Two months was given to reply.

Petitioner filed a request for reconsideration on October 23, 2000, which, given the one month extension of time and the certificate of mailing, was timely. That petition was dismissed in a decision dated December 14, 2000 for failure to show that the nonsignor cannot be reached or refused to sign, for failure to file an acceptable oath or declaration, and a satisfactory statement of the nonsignor's last known address. Two months was given to reply.

Petitioner filed this request on February 14, 2001. This petition includes a declaration by the nonsignor stating that he was given the opportunity to review the application and sign the declaration but that he had refused to. He also stated his current address.

The above-identified application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(a), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

This application will be forwarded to the Office of Initial Patent Examination for further processing under rule 1.47(a).

File A-66397 Atty RMA

Due Date —

Type — Refs —

[1] Also missing was the statutory basic filing fee.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20081216

DATE : December 16, 2008

TO SPE OF : ART UNIT 2628

SUBJECT : Request for Certificate of Correction on Patent No.: 10/458493 (7,167,181 B2)

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

Request for Certification of Correction approved

SPE: Kee Tung **Art Unit** 2628

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

WARE FRESSOLA VAN DER SLUYS &
ADOLPHSON
BRADFORD GREEN BUILDING 5
755 MAIN STREET, P.O. BOX 224
MONROE CT 06468

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SEP 0 6 2005

OFFICE OF PETITIONS

In re Application of :
Jukka Varis et al :
Application No. 10/458,495 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 915-007.28 :

This is a decision on the petition, filed September 2, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on June 27, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2817 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. _____

Date : September 6, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Jukka Varis et al
Application No. :10/458,495
Filed :June 9, 2003

The above-identified application has been assigned Patent No. 6,946,925 and an issue date of September 20, 2005.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of September 20, 2005:

"All reference to Patent No. 6,946,925 to Jukka Varis et al of Finland for METHOD AND SYSTEM FOR A GENERATION OF A TWO-LEVEL SIGNAL appearing in the Official Gazette of September 20, 2005 should be deleted since no patent was granted."

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89
Tamara Greene, ST-8C13

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

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND OH 44114

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MAR 0 3 2006

OFFICE OF PETITIONS

In re Application of :
Power, et al. :
Application No. 10/458,514 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. CSAZ 2 00202 :
For: VIBRATION ISOLATOR ASSEMBLY HAVING ALTERED STRESS CHARACTERISTICS, AND METHOD OF ALTERING STRESS CHARACTERISTICS

This is a decision on the petition under 37 CFR 1.181, filed December 30, 2005, 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 final Office action, mailed May 6, 2005, which set forth an extendable three (3) month period for reply. The Office contended that this application became abandoned on August 7, 2005 for failure to reply to the May 6, 2005 final Office action. A Notice of Abandonment was mailed on November 17, 2005.

Petitioners assert a Notice of Appeal and a request for a three month extension of time were timely transmitted via facsimile to and received by the Office on November 7, 2005. The undersigned finds this assertion completely convincing as these documents are present in the application file and Office financial records shows that the required fees were charged.

The petition under 37 CFR 1.181 is **granted** and the 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. 3683 to process the November 7, 2005 Notice of Appeal and await receipt of petitioners' Appeal brief.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Mail Date: 04/20/2010

Applicant	: Roy Leban	: DECISION ON REQUEST FOR
Patent Number	: 7571108	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/458,552	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1638** 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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CHICAGO IL 60604

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OFFICE OF PETITIONS

In re Application of
Hiroyui Otai et al.
Application No. 10/458,563
Filed: June 10, 2003
Attorney Docket No.: **CU-6012**

ON PETITION

This is a decision on the petition filed September 24, 2007 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 September 18, 2006. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested, this application became abandoned December 19, 2007. Accordingly, a Notice of Abandonment was mailed April 17, 2007.

This matter is being referred to Technology Center 1756 for appropriate action on the amendment filed September 24, 2007.

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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OFFICE OF THE DIRECTOR
TC 3600

MCANDREWS HELD & MALLOY, LTD
500 West Madison Street
Suite 3400
Chicago, IL 60661

In re application of : **DECISION ON PETITION**
Michael W. Grogan : **TO MAKE SPECIAL**
Application No. 10/458,577 : **(ACCELERATED**
Filed: June 9, 2004 : **EXAMINATION)**
For: METHOD, SERVICE AND COMMUNICATION SYSTEM FOR THE FOOD INDUSTRY AND THE DISTRIBUTION INDUSTRY

This is in response to the petition filed on January 28, 2005 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02, VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

Since all of the requirements for special status under MPEP § 708.02, VIII have been met, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/jwk: 02/08/05

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MAY 19 2006

OFFICE OF PETITIONS

In re Application of :
Grogan, et. al. :
Application No. 10/458,577 :
Filed: June 9, 2003 :
Attorney Docket No. 15052US01 :

DECISION ON REQUEST
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 by facsimile transmission on September 20, 2005.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

A review of the record shows that George Wheeler, signed the request on behalf of all attorneys or agents of record who are associated with Customer No. 23446. However, Timothy L. Herney, Janet M. McNicholas, Anthony E. Dowell, David Muzilla and Anita Lemke currently has power of attorney in this application, but is not listed as an attorney or agent under Customer No. 23446. Since they were omitted, it is unclear whether or not the individuals listed above should be withdrawn or retain power.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

This application file is being referred to Technology Center Art Unit 3625, for review of the Request for Continued Examination (RCE) filed February 13, 2006.

Telephone inquiries concerning this decision should be directed to Andrea Smith at 571-272- 3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee: Amelia Au

cc: MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

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OFFICE OF PETITIONS

In re Application of :
Alan G. Bunte, et al. :
Application No. 10/458,597 : DECISION ON PETITION
Filed: June 10, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 14407US03 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 8, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status

of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., (August 2001), Section 201.11, Reference to First Application. In this regard, PCT Application No. PCT/US93/12628 fails to state a specific relationship to Application Nos. 08/027,140 and 07/997,693. Further, the "Amendments to the Specification" were directed to Application No. 10/101,436, rather than the instant application. Note the heading on page 2 of the amendment.

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] which sets forth the relationship of the prior-filed application(s) 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 Customer Window located at:
By hand:	U.S. Patent and Trademark Office 220 20th Street S Customer Window, Mail Stop Petitions Crystal Plaza Two Lobby, Room 1B03 Arlington, VA 22202
By fax:	(703) 872-9306 ATTN: Office of Petitions

Any questions concerning this matter may be directed to Retta Williams at (703) 306-5594.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] *Note* 37 CFR 1.121

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OFFICE OF PETITIONS

In re Application of :
Ronald L. Mahany, et al. :
Application No. 10/458,597 :
Filed: June 10, 2003 :
Attorney Docket No. 14407US03 :

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 June 15, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition still fails to comply with item (1) above. In this regard, the amendment does not state the relationship between Application No. PCT/US94/05037 and Application No. 08/198,404. *Note* page 3, first sentence of last paragraph. Accordingly, the amendment filed with the petition fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

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] which sets forth the relationship of the prior-filed applications is required.

As an aside, petitioner is advised that, where an application claims a benefit under 35 U.S.C. 120 of a chain of applications, the application must make a reference to the first (earliest) application and every intermediate application. *See* Sampson v. Ampex Corp., 463 F.2d 1042, 1044-45, 174 USPQ 417, 418-19 (2d Cir. 1972); Sticker Indus. Supply Corp. v. Blaw-Knox Co., 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968); Hovlid v. Asari, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962). See also MPEP § 201.11. In addition, every intermediate application must also make a reference to the first (earliest) application and every application after the first application and before such intermediate application. MPEP Section 201.06(d). Petitioner should review the claims submitted to ensure that a reference is made to the first application and to every intermediate application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Post Office Box 1450
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 Retta Williams at (571) 272-3229.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] *Note* 37 CFR 1.121

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SUITE 3400
CHICAGO IL 60661

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In re Application of :
MAHANY, RONALD L. et. al. :
Application No. 10/458,597 : DECISION ON PETITION
Filed: June 10, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 14407US03 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 13, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § § 120 and 365(c) for the benefit of priority to the prior-filed 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 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 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.

Applicant is again reminded as set forth in the prior dismissal decision of September 8, 2005 that where an application claims a benefit under 35 U.S.C 120 of a chain of applications, the application must make reference to the first (earliest) application and every intermediate application. *See* Sampson v. Ampex Corp., 463 F.2d 1042, 1044-45, 174 USPQ 417, 418-19 (2d Cir. 1972); Sticker Indus. Supply Corp. v. Blaw-Knox Co., 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968); Hovlid v. Asari, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962). See also MPEP § 201.11. **In addition, every intermediate application must also make reference to the first (earliest) application and every application after the first application and before such intermediate application. MPEP Section 201.06(d). Petitioner should review the priority claims submitted to ensure that a reference is made to the first application and to every intermediate application. Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A. See MPEP 201.11(C).** Inspections of the intermediate applications reveal defects in the chain of priority claims. Applicant should review each intermediate application in the chain to ensure compliance with MPEP 201.11(C).

Any inquiries concerning this decision may be directed to Amelia Au at (571) 272-7414. 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 2616 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § § 120 and 365(c) to the prior-filed applications.

Frances Hicks
Lead Petitions Examiner
Office of Petitions

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In re Application of	:	
ITO, et al.	:	
Application No. 10/458,598	:	DECISION GRANTING PETITION
Filed: June 10, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2803.68065	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed May 15, 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 March 19, 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 Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 2839 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : July 02, 2008

TO SPE OF : ART UNIT 2821

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/458608 Patent No.: 7091672 B2

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

[redacted]

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

SPE 2163
SPE Art Unit

PAGE 1/5 * RCVD AT 7/14/2008 7:01:57 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/29 * DNIS:2709990 * CSID:703 308 0758 * DURATION (mm-ss):03-10

UNITED STATES PATENT AND TRADEMARK OFFICE

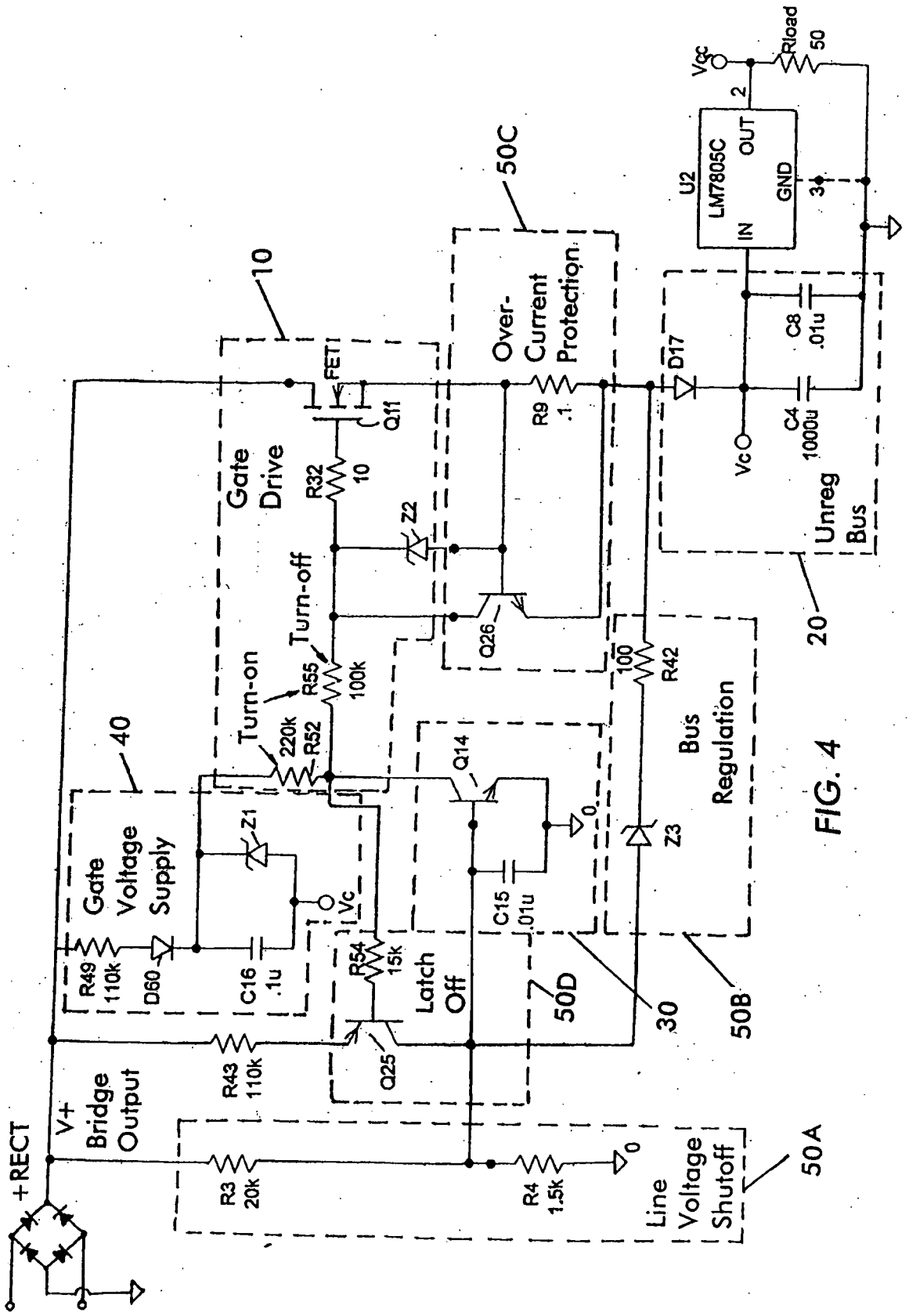
CERTIFICATE OF CORRECTION

PATENT NO. : 7091672 B2
APPLICATION NO. : 10/458,608
ISSUE DATE : 08/15/06
INVENTOR(S) : STEFFIE, JAMIE J.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Delete drawings sheet 4 of 7 and substitute therefor the drawing sheet, consisting of fig. 4 as shown on the attached page.

2 of 2


+RECT
V+
Bridge
Output
R3
20k
R4
1.5k
Line
Voltage
Shutoff
50A
R43
110k
Q25
R54
15k
Latch
Off
50D
30
50B
Gate
Voltage
Supply
40
R49
110k
D60
C16
.1u
Z1
Vc
Turn-on
220k
R52
R55
100k
Turn-off
Gate
Drive
10
R32
10
Z2
FET
Q11
Q26
Q14
C15
.01u
Over-
Current
Protection
50C
R9
.1
D17
Vc
C4
1000u
C8
.01u
Unreg
Bus
20
Bus
Regulation
100
R42
Z3
U2
LM7805C
IN
OUT
GND
Vcc
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3

FIG. 4

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OFFICE OF PETITIONS

In re Application of :
Gonsiorawaski :
Application No. 10/458,616 :
Filed: June 10, 2003 : ON PETITION
Attorney Docket No.: 3843.1000-000 :
For: PHOTOVOLTAIC MODULE WITH LIGHT :
REFLECTING BACKSKIN

This is a decision on the petition, filed June 17, 2005 (certificate of mailing date June 14, 2005), under 37 CFR 1.137(a) to revive the above-identified application.

The petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Reconsideration Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the August 23, 2004 non-final Office action. No response being received and no extensions of time being obtained, this application became abandoned on November 24, 2004. A Notice of Abandonment was mailed on March 14, 2005.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (**1**) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding

balance thereof; (**2**) the petition fee as set forth in § 1.17(l); (**3**) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (**4**) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. This petition does not satisfy requirement (**3**).

Regarding (**3**), the showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887) (emphasis added).

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 U.S.C. § 133. Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term 'unavoidable' "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

In the instant case, petitioner has failed to provide adequate evidence that the entire delay in filing a response to the August 23, 2004 non-final Office action was unavoidable. Sole inventor Ronald C. Gonsiorawaski passed away on December 13, 2003. An executor was appointed on April 7, 2004. One of the sole inventor's attorneys of record was Attorney Nicholas P. Pandiscio. A non-final Office action was properly mailed to Attorney Nicholas P. Pandiscio of Pandiscio & Pandiscio PC (at the official correspondence address of record) on August 23, 2004. No timely response was received. The examiner of record contacted Attorney Pandiscio on March 7, 2005. During the interview, Attorney Pandiscio stated no response to the August 23, 2004 non-final Office action had been filed and that the application was to go abandoned.

Petitioner asserts that the power of attorney to Attorney Nicholas P. Pandiscio of Pandiscio & Pandiscio PC became void as to the application when the sole inventor passed away. Therefore, petitioner argues that Attorney Pandiscio's decision to allow the application to go abandoned, should not be attributed to the Executor and the delay was unavoidable.

Under 35 U.S.C. Section 133 (1988), if an applicant fails to prosecute an application "within six months after any action therein, of which notice has been given or mailed to the applicant, . . . 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." Whether any delay was unavoidable is evaluated under a reasonably prudent person standard. *In re Mattullath*, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). Since abandonment occurs from failure to prosecute an application, the applicant is responsible for explaining any failure by showing that he acted as a reasonably prudent person.

The sole inventor passed away on December 13, 2003. The executor was appointed on April 7, 2004. By July 27, 2004, the executor was aware that Attorney Pandiscio was still conducting patent business for the deceased inventor. On July 27, 2004 the executor contacted Attorney John L. DuPre to represent him. From July 27, 2004, the executor was aware that Attorney Pandiscio was still prosecuting the application, yet, the executor did nothing to assert control. The record shows that the executor took no steps to change the power of attorney or correspondence address of record until the present petition was filed. Attorney Pandiscio received the August 23, 2004 non-final Office action and contacted Attorney DuPre on September 3, 2004 to discuss the August 23, 2004 non-final Office action. The two attorneys discussed matters pertaining to the August 23, 2004 non-final Office action from September 13, 2004 to April 28, 2005, but the executor/ his representative did not take action to ensure a timely response to the August 23, 2004 non-final Office action was filed.

Diligence on the part of the party in interest is essential to show unavoidable delay. See, Douglas v. Manbeck, 21 USPQ2d 1697, 1699-1700 (E.D. Pa. 1991). It follows that the executor's conduct should be considered in deciding the issue of unavoidable delay, arguably from April 7, 2004, when he was appointed executor, but definitely from July 27, 2004, when Attorney Pandiscio contacted the executor to discuss patent matters. As stated above, the executor took no action with respect to changing the power of attorney and correspondence address until the instant petition was filed. A reasonably prudent person, within the meaning of Pratt, *supra*, would have taken steps to appoint his own attorney and control prosecution upon learning that the former attorney of record was still conducting patent matters for the deceased sole inventor. The Office did not have any reason to suspect the sole inventor passed away. It was the executor's responsibility to inform the Office as to any changes in power of attorney and correspondence address. In addition, the executor should have taken steps to respond timely to the August 23, 2004 non-final Office action.

While Attorney Pandiscio's power of attorney became void on the sole inventor's death, it does not excuse the executor's inattention and lack of intervention with respect to this application after he was on notice that Attorney Pandiscio was still prosecuting the application. The executor did not exercise the due care and diligence of a reasonably prudent person. As such, petitioner has failed to reasonably establish unavoidable delay.

Petitioner should consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a

showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $ 1,500.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

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

enclosures: Notices Regarding Change in Power of Attorney

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

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MAR 0 3 2006

OFFICE OF PETITIONS

In re Application of :
Gonsiorawaski :
Application No.: 10/458,616 :
Filed: June 10, 2003 :
Attorney Docket No.: 3843.1000-000 :
FOR: PHOTOVOLTAIC MODULE WITH :
LIGHT REFLECTING BACKSKIN :

DECISION GRANTING PETITION

This is a decision on the petition, filed September 28, 2005 (certificate of mailing date September 26, 2005), 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 August 23, 2004 non-final Office action. No response being received and no extensions of time being obtained, this application became abandoned on November 24, 2004. A Notice of Abandonment was mailed on March 14, 2005.

Applicant has submitted an amendment in reply to the August 23, 2004 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the August 23, 2004 non-final Office action, and the petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 1753 for consideration of the amendment filed on September 28, 2005 (certificate of mailing date September 26, 2005).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

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OCT 19 2005

OFFICE OF PETITIONS

STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Application of :
Ronald A. Wilklow :
Application No. 10/458,629 :
Filed: June 11, 2003 :
Attorney Docket No. 1857.0830000 :

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3) AND
UNDER 37 CFR 1.78(a)(6)

This is a decision in response to the petition, filed April 22, 2005, which is being treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

All requirements being met, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and § 119(e), 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 application is entitled to the benefit of the filing date of the prior-filed applications. In order for the application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Sherry D. Brinkley at (571) 272-3204

This application is being forwarded to Technology Center Art Unit 2872 for appropriate action on the amendment submitted April 22, 2005, including consideration by the examiner of the claim under 35 U.S.C. § §120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances M. Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www. uspto. gov

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

In re Application of :
Hongyong Zhang et al :
Application No. 10/458,648 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. 07977-159004

This is a decision on the petition filed, August 29, 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 May 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]

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2871 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Fish & Richardson P.C.
1425 K Street, N.W. – 11th Floor
Washington, DC 20005-3500

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
SUITE 1401
255 SOUTH ORANGE AVENUE
ORLANDO, FL 32801

COPY MAILED
JAN 27 2010

In re Patent No. 6,923,137	:	
Issued: August 2, 2005	:	
Application No. 10/458,664	:	NOTICE
Filed: June 10, 2003	:	
Atty Docket No. 29970	:	

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

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ALFONSO G. BENAVIDES
ECS REFINING
106 TEJAS DR
TERRELL, TX 75160

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OFFICE OF PETITIONS

In re Application of

Alfonso Gerardo Benavides

Application No. 10/458,672

Filed: June 11, 2003

Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 12, 2006, and in duplicate on December 18, 2006, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.137(a) is **dismissed as moot.**

The above-cited application became abandoned on February 13, 2006, for failure to file a proper reply in a timely manner to the final Office action mailed October 12, 2005, which set a shortened statutory period for reply of three months from its mailing date. Responses were received on January 12, 2006, and February 2, 2006, neither of which placed the application in condition for allowance. A Notice of Abandonment was mailed on June 12, 2007.

Examiner Drodge has determined that the amendment filed July 17, 2006, places the application in condition for allowance.

The petition under 37 CFR 1.137(a), filed July 17, 2006, is dismissed as moot because the application is being revived pursuant to 37 CFR 1.137(b) as per petitioner's request. The petition fee of $250.00 will be refunded, in due course.

The application is being forwarded to Technology Center 1700, GAU 1723 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

KRATZ QUINTOS & HANSON LLP
1420 K STREET NW
SUITE 400
WASHINGTON DC 20005

In re Application of :
Baniecki, et al. :
Application No. 10/458,678 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. 030644 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed July 16, 2009

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely reply to the Office letter mailed November 25, 2008. This action set an extendable period for reply of one month. No reply having been received, the application became abandoned on December 26, 2008. The Office mailed a Notice of Abandonment on July 10, 2009.

To establish non-receipt of an Office action, a petitioner:

> 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.[1]

In addition, the Manual of Patent Examining Procedure § 711.03(c) also states:

> 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 non-received Office action, a copy of the master 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 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.

Petitioner has not submitted a copy of a master docket record showing all his replies docketed for a due date of December 25, 2008, nor has petitioner stated that such a record does not exist. Rather, petitioner has only submitted a copy of an incoming mail log. If no master docket report exists, petitioner should so state on renewed petition.

While the showing of record is not presently sufficient to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (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 for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

---

[1] MPEP 711.03(c).

Enclosed is a courtesy copy of the November 25, 2008 action.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: Office letter mailed November 25, 2008 (3 pages)

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.
10/458,678	06/11/2003	John David Baniecki	030644	1715

23850 7590 11/25/2008
KRATZ, QUINTOS & HANSON, LLP
1420 K Street, N.W.
Suite 400
WASHINGTON, DC 20005

EXAMINER	
YANG, MINCHUL	

ART UNIT	PAPER NUMBER
2891	

MAIL DATE	DELIVERY MODE
11/25/2008	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.

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10458678	6/11/2003	BANIECKI ET AL.	030644

KRATZ, QUINTOS & HANSON, LLP
1420 K Street, N.W.
Suite 400
WASHINGTON, DC 20005

EXAMINER	
Minchul Yang	
ART UNIT	**PAPER**
2891	20081119

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See attached the Office action.

/Wael M Fahmy/
Supervisory Patent Examiner, Art Unit 2814

The response to the requirement for election/restriction, filed on 7/30/08, is non-responsive because the response does not include election of species from sub-Species 2a and 2b.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

MY /M. Y./

Examiner, Art Unit 2891

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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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SEP 28 2009

OFFICE OF PETITIONS

KRATZ QUINTOS & HANSON LLP
1420 K STREET NW
SUITE 400
WASHINGTON DC 20005

In re Application of :
Baniecki, et al. :
Application No. 10/458,678 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. 030644 :

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed August 31, 2009.

The petition under 37 CFR 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to timely reply to the Office letter mailed November 25, 2008. This action set an extendable period for reply of one month. No reply having been received, the application became abandoned on December 26, 2008. The Office mailed a Notice of Abandonment on July 10, 2009. Applicants filed a petition to withdraw the holding of abandonment on July 16, 2009, asserting that they never received the November 25, 2008 action. However, the petition was dismissed in a decision mailed on August 14, 2009. The decision explained that applicants had not submitted a copy of a master docket report, showing all of their replies docketed for a due date of December 25, 2008.

With the instant petition, petitioner has submitted a copy of a master docket report, showing all of the replies docketed for a due date of December 25, 2008. An entry for the instant application does not appear, supporting the conclusion that the November 25, 2008 Office action was not received.

The application is being forwarded to Group Art Unit 2891 for re-mailing of the November 25, 2008 Office action, setting a new period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 4

Dykema Gossett, PLLC
Suite 300 West
1300 I Street, N.W.
Washington DC 20005-3306

MAIL

APR 2 6 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Fred Sawyer
Application No. 10/458,690
Filed: June 11, 2003
For: **METHOD AND APPARATUS FOR TRACKING OBJECTS AND PEOPLE**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the petition filed on August 27, 2003, pursuant to Manual of Patent Examination Procedure §708.02, section VIII, request for 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 has met 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 claims should be directed to a single invention. If it is determined that the claims do not pertain to only one invention and if applicant does not make an election without traverse, then the special status of the application will cease.

The application file is being forwarded to the examiner for appropriate action in due course.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4778

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APR 2 8 2006

OFFICE OF PETITIONS

In re Application of
Robert T. Love et al.
Application No. 10/458,701
Filed: June 10, 2003
Attorney Docket No.: CS22400RL

ON PETITION

This is a decision on the petition, filed March 30, 2006 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office Action mailed July 15, 2005. An response filed September 15, 2005 was considered and the applicant was advised in an advisory action mailed November 7, 2005 that the response did not place the application in condition for allowance. A response filed November 18, 2005, with a two month extension of time request was considered by the Examiner and again the response did not place the application in condition for allowance. Although the Advisory Action was not mailed until March 20, 2006, the application became abandoned after the period for response was extended and after no timely response was filed which placed the application in condition for allowance. The instant petition and this decision precede the mailing of the Notice of Abandonment.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date

for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

The petition does not satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of July 15, 2005, within the time period for response. The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application.

No additional response was submitted with the petition, just the petition and the petition fee. Petitioner must submit a proper reply to the final Office action mailed on July 15, 2005, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay**.

Additionally, petitioner has filed a petition under 37 CFR 1.181 on even date, for a review of the Examiner's decision not to accept the supplemental declaration filed under 37 CFR 1.131 on November 18, 2005. Unless this application is revived the petition can not receive any consideration in the Technology Center. Once an application becomes abandoned, the Examiner has no further authority to act on the application. See Lorenz v. Finkl, 333 F.2d 885, 891 142 USPQ 26, 30 (CCPA 1964).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Robert T. Love et al.
Application No. 10/458,701
Filed: June 10, 2003
Attorney Docket No.: CS22400RL

ON PETITION

This is a decision on the renewed petition, filed May 11, 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 final Office Action mailed July 15, 2005. A response filed September 15, 2005 was considered and the applicant was advised in an advisory action mailed November 7, 2005 that the response did not place the application in condition for allowance. A response filed November 18, 2005, with a two month extension of time request was considered by the Examiner and again the response did not place the application in condition for allowance. Although the Advisory Action was not mailed until March 20, 2006, the application became abandoned after the period for response was extended and after no timely response was filed which placed the application in condition for allowance.

A petition filed March 30, 2006 was dismissed in a decision mailed April 28, 2006, prior to the mailing of the Notice of Abandonment because a proper response to the final rejection was not filed with the petition to revive.

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[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), 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.

Comes now petitioner with the instant renewed petition and an RCE as the response to the final rejection. Petitioner requests that the amendment filed November 18, 2005 be considered as the submission required under 37 CFR 1.114.

All other requirements having been met, this application is being forwarded to Technology Center 2617 for processing of the RCE.

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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Paper No. 7

RIORDAN & MCKINZIE
18th Floor
600 Anton Blvd.
Costa Mesa CA 92626

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FEB 2 4 2004

OFFICE OF PETITIONS

In re Application of
Towery, Hendricks, Schilling & Chen
Application No.: 10/458,707
Filed: June 9, 2003
Attorney Docket No.: 30-4385 DIV2 -4780
For: OXIDIZING POLISHING SLURRIES FOR LOW DIELECTRIC CONSTANT MATERIALS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed February 11, 2004 (certificate of mailing date January 26, 2004).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on June 9, 2003 without an executed oath or declaration. Accordingly, on August 26, 2003, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing.

In response, on February 11, 2004 (certificate of mailing date January 26, 2004), a petition for a three month extension of time and required fee, a declaration executed by 3 of 4 joint inventors, the surcharge, the petition fee, and the instant petition were filed. The petition lists the last known address of non-signing inventor Neil H. Hendricks and states that "We have made several attempts to obtain a signed Declaration/Power of Attorney from him but he has refused."

A grantable petition under 37 CFR 1.47(a) requires

(1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
(2) a proper oath or Declaration executed by the available joint inventor(s),
(3) the fee of $130 as specified in 37 CFR § 1.17(h), and
(4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), Applicants have failed to establish that the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventor be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). The exhibits to the petition do not establish that a complete copy of the application was mailed to Mr. Hendricks' last known address.

Mr. Hendricks must have the complete application in his possession in order to make an informed decision as to whether he joins in its filing. When petitioners can show that Mr. Hendricks received the complete application and that he either refused to sign the declaration or would not respond to the request that he sign the declaration within a reasonable amount of time, petitioners will have satisfied this requirement.

A courtesy copy of this decision will be mailed to the address listed in the declaration/power of attorney submitted with the instant petition. Until Rule 47 status is granted to the application, the power of attorney cannot be entered and made of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450
ATTN: E. Shirene Willis

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202
ATTN: E. Shirene Willis

By FAX: (703) 872-9306
ATTN: Office of Petitions -- E. Shirene Willis

Telephone inquiries 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: SANDRA P. THOMPSON
BINGHAM MCCUTCHEN, LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CA 94111-4067

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Paper No. 10

SANDRA P. THOMPSON
BINGHAM MCCUTCHEN, LLP
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MAY 1 0 2004

OFFICE OF PETITIONS

In re Application of
Towery, Hendricks, Schilling & Chen
Application No.: 10/458,707
Filed: June 9, 2003
Attorney Docket No.: 30-4385 DIV2 -4780
For: OXIDIZING POLISHING SLURRIES FOR LOW DIELECTRIC CONSTANT MATERIALS

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the reconsideration petition under 37 CFR 1.47(a), filed April 19, 2004 (certificate of mailing date April 14, 2004).

The petition is granted.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record as set forth in the declaration/power of attorney filed January 29, 2004. 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.

Petitioners have shown that the non-signing inventor, Neil Hendricks, cannot be located. Specifically, the petition, the declaration/statement of facts of Paralegal Kristin J. Azcona, and accompanying exhibits establish that despite contacting his former employer and sending two copies of the application as filed and a declaration/power of attorney to Mr. Hendrick's last known address, that Mr. Hendricks could not be located. A independent search of LEXIS reveals no new address for Mr. Hendricks. Petitioners have shown diligence in attempting to locate Mr. Hendricks. Petitioners have submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to Technology Center 3700 for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

cc: SANDRA P. THOMPSON
PLAZA TOWER
600 ANTON BOULEVARD, 18TH FLOOR
COSTA MESA, CA 92626

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Paper No. 5

Karl G. Hanson, Esq.
Office of Intellectual Property Counsel
3M Innovative Properties Company
P.O. Box 33427
St. Paul, MN 55133-3427

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OCT 0 9 2003

OFFICE OF PETITIONS

In re Application of	:	
Curran and Williams	:	
Application No. 10/458,708	:	DECISION GRANTING
Filed: June 10, 2003	:	PETITION
Attorney Docket No. 53924US011	:	

This is a decision on the petition filed July 29, 2003, which is being treated as a request to accord the above-identified application a filing date of June 10, 2003.

On June 10, 2003, the application was filed.

On July 21, 2003, the Office of Initial Patent Examination mailed a Notice stating that drawings were missing and that a filing date would be accorded upon receipt of drawings. In response, the present petition was filed.

A review of the Utility Patent Application Transmittal sheet indicates the entire disclosure of the parent application was incorporated by reference.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that drawings were present in the Office on June 10, 2003, albeit in the file of another application, i.e., application No. 09/420,671. Therefore, on petition, the application may be accorded the requested filing date of June 10, 2003.

In view of the above, the petition is **granted**.

The Office will process the instant application using the copy of the drawings originally filed May 31, 2001, in the parent application.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of June 10, 2003, using the application papers filed on June 10, 2003 and the copy of the 13 sheets of drawings filed on July 29, 2003.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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#5

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Richard C. Litman
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NOV 0 3 2003

Office of the Director
Group 3600

Paper No. 4

In re application of
George M. Oden et al.
Application No. 10/458,717
Filed: June 11, 2003
For: WEED GUARD

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on June 11, 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 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 she is at least 65 years of age.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/cps 10/27/03

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Paper No. 3

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LOS ANGELES CA 90025

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AUG 27 2003

OFFICE OF PETITIONS

In re Application of
Lee et al.
Application No. 10/458,723
Filed: June 3, 2003
Attorney Docket No. 5895P034

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.10(c), filed August 1, 2001, requesting that the above-identified application be accorded a filing date of June 3, 2003, rather than the presently accorded filing date of June 4, 2003.

Petitioner explains that the application papers were deposited with the USPS Express Mail Service on June 3, 2003, and requests that the application be accorded that filing date. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EV339903614. The "date-in" indicated on the Express Mail label is June 3, 2003. The same Express Mail label number was placed on the original application papers located in the official file.

In view of the above, the petition is **granted**. No petition fee is necessary.

This application file will be forwarded to the Office of Initial Patent Examination for correction of the filing date to June 3, 2003, and for the mailing of a corrected filing receipt.

Telephone inquiries should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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2 INDEPENDENCE WAY
P. O. BOX 5312
PRINCETON NJ 08543-5312

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JUL 1 4 2006
OFFICE OF PETITIONS

In re Application of :
Adolph et al. :
Application No. 10/458,747 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. PD020031 :
Title of Invention: Link Resolving Mechanism :

This is a decision on the petition under 37 CFR §1.137 (a) filed June 21, 2006 to withdraw the holding of abandonment. This petition is properly treated under 37 CFR 1.181.

The petition filed under 37 CFR 1.181 is **Granted**.

The application was held abandoned February 19, 2006 for failure to timely submit a proper reply to the non-final Office Action mailed November 18, 2005. The non-final Office Action set a three (3) month extendable time period for reply. This decision precedes the mailing of a Notice of Abandonment.

Petitioner maintains that a response to the non-final Office Action was mailed on May 18, 2006. A review of Office records shows a communication was received by the Office on May 30, 2006. This communication was matched to the serial number identified in the amendment namely, serial No. 10/458,757. The communication did not timely reach the correct application (10/458,747) due to petitioner's error. As a result of this error, the application was held abandoned.

The transmittal letter did contain the correct application number, art unit, name of the examiner,

attorney docket number, and filing date. The amendment contained the correct attorney docket number. In support of petitioner's contention that a response was timely submitted to the Office Action, petitioner has submitted a copy of the response which contains a certificate of mailing pursuant to 37 CFR 1.8.

The response to the non-final Office Action and request for three month extension of time has been located in application 10/458,757. Based on the facts stated in the instant petition and the corroborative evidence provided, it is concluded that the holding of abandonment was improperly imposed.

The $500.00 unavoidable petition fee is not required. However, petitioner was charged the three month extension of time fee for small entity in the amount of $510.00. A review of the record shows that petitioner paid the filing fee for other than small entity. A statement of entitlement to small entity status has not been located in the record. Accordingly, the $500.00 petition fee will be applied to the $1020.00 extension of time fee. Deposit account 07-0832 will be charged the $10.00 difference.

This application is being forwarded to the Technology Center 2100 for further processing of the amendment submitted on May 30, 2006.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant

Charlema R. Grant

Petition Attorney

Office of Petitions

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JUL 25 2008

In re Application of :
Dirk ADOLH, et al :
Application No. 10/458,747 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. PD020031 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 26, 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 October 26, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is January 27, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

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 Diane Goodwyn at (571) 272-6735.

This application is being referred to Technology Center AU 2166 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.

Chipt Bottth

for Thurman Page
Petitions Examiner
Office of Petitions

cc: JOEL M. FOGELSON
TWO INDEPENDENCE WAY,
SUITE 200
PRINCETON, NJ 08540

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COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET, SUITE 1800
SAN ANTONIO TX 78205-1521

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JAN 29 2010

In re Application of	:	
Christine FIELDS et al.	:	
Application No. 10/458,754	:	ON PETITION
Filed: June 11, 2003	:	
Attorney Docket No. EXTRACT-NEW	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 16, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 14, 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 above-identified application became abandoned on June 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 an amendment; (2) the petition fee of $810; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of March 14, 2007 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant of 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with 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 to the address of record.

Telephone inquiries concerning this decision should be directed to Olisa Anwah at (571) 272-6051 or in his absence, the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 2443 for appropriate action on the concurrently filed amendment.

David A. Bucci
Petitions Examiner
Office of Petitions

cc: **PATTON BOGGS LLP**
8484 Westpark Drive, 9th Floor
McLean, Virginia 22102

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112 EAST PECAN STREET, SUITE 1800
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JAN 29 2010

In re Application of :
FIELDS, CHRISTINE :
Application No. 10/458,754 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. EXTRACT-NEW :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 16, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The above-referenced patent application became abandoned for Applicant's failure to reply to a Non-Final Office Action mailed March 14, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 15, 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 in Response to Non-Final Office Action" responding to the Non-Final Office Action mailed March 14, 2009, (2) the small entity petition fee of $810.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Non-Final Office Action is accepted as having been unintentionally delayed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Anthony Knight at (571)-272-3687.

This application is being referred to Technology Center AU 1655 for appropriate action by the Examiner in the normal course of business on the reply received.

Anthony Knight
Supervisor
Office of Petitions

CC DAVID G. HENRY
PATTON BOGGS LLP
8484 WESTPARK DRIVE
9TH FLOOR
MCLEAN, VIRGINIA 22102

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David G. Henry
418 Riverview Drive
Woodway, TX 76712

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FEB 15 2008

In re Application of :
Alan Andrews et al. :
Application No. 10/458,764 : ON PETITION
Filed: June 09, 2003 :
Attorney Docket No. AFS ALCOHOL-1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed 31 December 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 04 April 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 05 July 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 $405.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $770.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Allen C. Ho at (571) 272-6052.

This application is being referred to Technology Center AU 1617 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

David Bucci
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
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PATTON BOGGS LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN, VA 22102

Mail Date: 06/01/2010

Applicant	: Alan Andrews	: DECISION ON REQUEST FOR
Patent Number	: 7662863	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/458,764	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **770** 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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Jeffrey Lewis
Patterson Belknap Webb & Tyler, LLP
Attention: I.P. Docketing
1133 Avenue of the Americas
New York, NY 10036

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JUL 28 2006

OFFICE OF PETITIONS

In re Application of :
Thomas S. Napolitano et al. :
Application No. 10/458,765 : DECISION ON PETITION
Filed: June 9, 2003 : TO WITHDRAW
Attorney Docket No. N0215-002 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 9, 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 Jeffrey Lewis on behalf of all attorneys of record who are associated with Customer No. 23723.

All attorneys/agents associated with the Customer Number 23723 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Thomas S. Napolitano at the address indicated below.

There is no outstanding Office action at time.

Telephone inquiries concerning this decision should be directed to Terri Williams at 571-272-2991.

David Bucci
Petitions Examiner
Office of Petitions

cc: Thomas S. Napolitano
511 East Little Neck Road
West Babylon, NY 11704

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

GUERRY LEONARD GRUNE
784 S VILLIER CT.
VIRGINIA BEACH VA 23452

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OFFICE OF PETITIONS

In re Application of :
Scott J. Neil :
Application No. 10/458,771 :
Filing Date: June 10, 2003 : DECISION ON PETITION
Title of Invention: POSITIONAL : UNDER 37 C.F.R. §1.10(E)
HOLDER FOR RETAINING A :
CYLINDRICAL OR SEMI-CYLINDRICAL :
DEVICE :

BACKGROUND

This is a decision on the petition filed May 31, 2006, which is properly treated as a petition under 37 C.F.R. §1.10(e), requesting that the holding of abandonment be withdrawn.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed August 23, 2005, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on November 24, 2005. A notice of abandonment was mailed on May 5, 2006.

Petitioner has alleged that a response to this Office communication was submitted on February 23, 2006. Petitioner has submitted a copy of this response, a copy of the Express Mail label, and a print-out of the tracking results from the USPS website.

THE RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.10(e) sets forth, *in toto*:

(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 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.

ANALYSIS

Petitioner has failed to comply with 37 C.F.R. §§1.10(e)(2) and (4).

Regarding the second requirement of Rule §1.10(e), the copy of the response which was submitted with the present petition has been reviewed; it does not appear that the number of the "Express Mail" mailing label was placed on this correspondence prior to the original mailing by "Express Mail."

Regarding the fourth requirement of Rule §1.10(e), it does not appear that Petitioner has included a statement which establishes that the copies of the correspondence and the "Express Mail"

mailing label are true copies of the originally mailed correspondence and original "Express Mail" mailing label.

CONCLUSION

For the above reasons, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.10(e)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[1], hand-delivery[2], or facsimile[3].

Alternate venue

Petitioner may also wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b).

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[4]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

---

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300- please note this is a central facsimile number.
4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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LEWIS, RICE & FINGERSH, LC
ATTN: BOX IP DEPT.
500 NORTH BROADWAY
SUITE 2000
ST LOUIS, MO 63102

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OFFICE OF PETITIONS

In re Application of :
Steve Brown, et. al. :
Application No. 10/458,790 :
Filed: June 10, 2003 :
Attorney Docket No. 28/1176US :

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**.

This file is being referred to the Office of Publications to await the response to the Notice of Allowance/Allowability mailed August 30, 2004.

Inquiries related to this communication should be directed to the undersigned at (703) 308-6711.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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William B. Patterson
PATTERSON & SHERIDAN, L.L.P.
Suite 1500
3040 Post Oak Boulevard
Houston TX 77056

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OFFICE OF PETITIONS

In re Application of :
Kersey :
Application No. 10/458,795 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. WEAT/0697 :
For: PRESSURE TRANSDUCER FEATURING LARGE DIAMETER OPTICAL WAVEGUIDE HAVING BRAGG GRATING AND BEING CONFIGURED FOR REDUCING THE BULK MODULUS OF COMPRESSIBILITY THEREOF

This is a decision on the petition under 37 CFR 1.181, filed November 16, 2005, 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 March 17, 2005, which set forth an extendable three (3) month period for reply. The Office contended that this application became abandoned on June 18, 2005 for failure to reply. A Notice of Abandonment was mailed on September 23, 2005.

Petitioner asserts an amendment and a request for a three month extension of time were timely transmitted via facsimile to and received by the Office on September 19, 2005 (a Monday). The undersigned finds this assertion completely convincing as these documents are present in the application file.

The petition under 37 CFR 1.181 is **granted**, the Notice of Abandonment is **vacated**, and the holding of abandonment is withdrawn. 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. 2874 for consideration of the amendment filed on September 19, 2005.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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ORRICK, HERRINGTON & SUTCLIFFE, LLP
4 PARK PLAZA
SUITE 1600
IRVINE, CA 92614-2558

MAIL

MAY 19 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
THOMAS FLYNN
Application No. 10/458,807
Filed: June 9, 2003

For: REPEATER FOR
TELECOMMUNICATIONS NETWORK

DECISION ON REQUEST TO
WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as agent of record filed on April 1, 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 met all of the above. Accordingly, the request is **GRANTED**.

Attorneys/agents listed in the Request to withdraw are withdrawn.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

cc: NORTH, WEBER & BAUGH LLP
2479 E/ BAYSHORE ROAD
SUITE 707
PALO ALTO, CA 94303

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NORTH WEBER & BAUGH LLP
2479 E. BAYSHORE RD., SUITE 707
PALO ALTO, CA 94303

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JUN 13 2006

OFFICE OF PETITIONS

In re Application of :
Thomas Flynn :
Application No. 10/458,807 : DECISION ON PETITION
Filed: June 9, 2003 : TO WITHDRAW
Attorney Docket No. 20003-1069 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 20, 2005.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, application has been transferred to the assignee, do not appear to meet any of the conditions set forth in 37 CFR 10.40.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at 571-272-3210.

David Bucci
Petitions Examiner
Office of Petitions

cc: Michael P. Flynn
1880 East St. Andrews Place
Santa Ana, CA 92705

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PFIZER INC.
PATENT DEPARTMENT, MS8260-1611
EASTERN POINT ROAD
GROTON CT 06340

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OFFICE OF PETITIONS

In re Application of :
William J. Curatolo et al :
Application No. 10/458,840 : ON PETITION
Filed: June 9, 2003 :
Attorney Docket No. PC9674C :

This is a decision on the petition filed March 28, 2005, under 37 CFR 1.181(a), To Withdraw The Holding Of Abandonment or, in the alternative, under 37 CFR 1.137(b), to revive the above-identified application.

The petition under 37 CFR 1.181(a) is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

As to the petition under 37 CFR 1.181(a):

> The showing required to establish nonreceipt of an Office communication *must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.* For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. **See MPEP 711.03(c) page 700-162.**

In view of the above, compliance under 37 CFR 1.181(a) have not been met.

As to the petition under 37 CFR 1.137(b):

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The above-identified application became abandoned for failure to timely reply to the Office letter mailed April 28, 2004, which set a period for reply of (1) month. Accordingly, the above-identified application became abandoned on May 29, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Technology Center AU 1615.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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JENKENS & GILCHRIST, PC
1445 ROSS AVENUE
SUITE 3200
DALLAS, TX 75202

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JUL 18 2005

OFFICE OF PETITIONS

In re Application of :
Lorin R. Gallistel :
Application No. 10/458,862 : DECISION GRANTING PETITION
Filed: June 11, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 67737-01004USPT :

This is a decision on the petition, filed February 22, 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 March 23, 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 October 27, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3220.

This matter is being referred to Technology Center Art Unit 2654 for examination in due course.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS CO 80527-2400

In re Application of :
Konsella, et al. : DECISION ON PETITION
Application No. 10/458,891 :
Received: June 10, 2003 :
Attorney Docket Number: :
100200934-1 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 and the petition to revive under 37 CFR 1.137(b), filed September 24, 2007.

The Notice of Abandonment mailed July 31, 2007 states that the application is abandoned due to failure to respond to a non-final Office action mailed January 11, 2007.

DECISION UNDER 37 CFR 1.181

Petitioners argue that the non-final Office action was not received.

A review of record reveals that the Office action mailed January 11, 2007, while seemingly intended for the instant application, was inadvertently directed to the incorrect application and incorrect correspondence address. Accordingly, there was an error in the mailing of the non-final Office action.

In view of the evidence thereof, the petition to withdraw the holding of abandonment under 37 CFR 1.181 is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

DECISION UNDER 37 CFR 1.137(b)

A grantable petition under 37 CFR 1.137(b) requires (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the

required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

In view of the withdrawal of the holding of abandonment, the petition under 37 CFR 1.137(b) is hereby **DISMISSED AS MOOT**.

The previously submitted petition fee will be refunded in due course.

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.

This application is being forwarded to the Group Art Unit 2151 for such other action as deemed appropriate by the examining official.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

CC: James D. Shaurette
Wells St. John, P.S.
601 W. First Ave. 1300, Ste. 1300
Spokane, WA 99201

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Patent Counsel
Huntsman Polyurethanes
286 Mantua Grove Road
West Deptford, NJ 08066-1732

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MAY 17 2004

OFFICE OF PETITIONS

In re Application of :
Parfondry, et al. :
Application No. 10/458,901 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. EUR 50808/USW/2 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 25, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before March 8, 2004. Accordingly, this application became abandoned on March 9, 2004.

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 (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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JACKSON & CO., LLP
6114 LA SALLE AVENUE
SUITE 507
OAKLAND CA 94611-2802

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OFFICE OF PETITIONS

In re Application of

Goodnow, et al. :

Application No. 10/458,914

: DECISION ON PETITION

Filed: June 10, 2003

:

Attorney Docket No. TS-02-10

This is a decision on the petition under 37 CFR 1.137(b), filed, September 5, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 24, 2006, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on May 25, 2006.

The amendment filed September 5, 2006, is noted.

The request for an extension of time within the third month filed September 5, 2006, is noted but cannot be granted as the request was made outside the maximum statutory period for reply to the non-final Office action. The amount of $1,020.00 will be refunded, in due course.

The application is being forwarded to Technology Center 3700, GAU 3767 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Date : March 10, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of **Application No. 10/458,921**

Applicant(s) : Gianfranco Stratico et al
Application No. : 10/458,921
Filed : June 10, 2003

The above-identified application has been assigned Patent No. 6,869,038 and an issue date of March 22, 2005.

It is hereby directed that this application be withdrawn from issue at the request of the applicant. Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of March 22, 2005:

"All reference to Patent No. 6,869,038 to Gianfranco Stratico et al of Italy for NEEDLE SOLUTION FOR COIL STRATIFICATION appearing in the Official Gazette of March 22, 2005 should be deleted since no patent was granted."

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison; Crystal Park 3, Suite 441 (FAX-703-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis (CDS), CM1-6A07
Tamara K. Greene, PK3-910

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Paper No.

SEYFARTH SHAW LLP
131 S. Dearborn Street
Suite 2400
Chicago IL 60603-5803

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SEP 14 2006

OFFICE OF PETITIONS

In re Application of :
Hironori Kobayashi : DECISION ON
Application No. 10/458,953 : PETITION
Filed: June 11, 2003 :
Title: METHOD FOR MANUFACTURING:
COLOR FILTER :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT - OFFICE ACTION NOT RECEIVED" filed May 25, 2006.

The above-identified application became abandoned for failure to file a reply to the restriction requirement mailed October 3, 2005. This Office action set a one month shortened statutory period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been received and no extension of time obtained, the above-identified application became abandoned on November 4, 2005. A courtesy Notice of Abandonment was mailed on May 3, 2006.

The instant petition was filed on the basis that the Office Action forming the basis of the abandonment was not received.

Petitioner's arguments and evidence have been considered, and found persuasive that withdrawal of the holding of abandonment is warranted. Petitioner's evidence establishes that the Office action was not properly mailed to the correspondence address of record pursuant to a request for change of correspondence address filed April 2004 (via Customer Number Upload Spreadsheet). The change of correspondence address was filed prior to the mailing of the Office action. However, the change of correspondence address by upload spreadsheet was not entered because a previous power of attorney filed November 2003 had not

been entered. (As such, the party filing the upload spreadsheet did not appear to have authority to change the correspondence address.) Thus, it is concluded that the correspondence address was not changed due to Office error and consequently, the Office action was mailed to the "wrong" address and was not received by applicant. Under the circumstances, withdrawal of the holding of abandonment is warranted.

In view thereof, the notice of abandonment mailed May 3, 2006 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 1756 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the Office action mailed October 3, 2005 and for restarting of the period for reply.

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
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DILWORTH & BARRESE LLP
333 EARLE OVINGTON BLVD.
UNIONDALE, NY 11553

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DEC 15 2006

OFFICE OF PETITIONS

In re Application of	:	
Katsuaki Tsutsumi et al	:	
Application No. 10/458,957	:	DECISION GRANTING PETITION
Filed: June 11, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 188-83 CON	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 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 November 29, 2005, as required by the Notice of Allowance and Fee(s) Due mailed August 29, 2005. A Notice of Abandonment was mailed on June 2, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the issue and publication fees ($1,400 and $300, respectively); (2) the $1,500 petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

The application file is being referred to Publishing Division.

Frances Hicks
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

Mail Date: 04/21/2010

Applicant	: Owen O'Neil	: DECISION ON REQUEST FOR
Patent Number	: 7596573	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/458,972	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/11/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **389** 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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TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

Mail Date: 05/18/2010

Applicant : Owen O'Neil
Patent Number : 7596573
Issue Date : 09/29/2009
Application No: 10/458,972
Filed : 06/11/2003

: 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 **466** 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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Paper No. 4

MR. FRANKLIN E. GIBBS
BIGELOW AEROSPACE
1899 W. BROOKS AVENUE
NORTH LAS VEGAS, NV 89032

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NOV 17 2003

OFFICE OF PETITIONS

In re Application of	:	
Robert T. Bigelow	:	
Application No. 10/458,981	:	NOTICE
Filed: June 10, 2003	:	
Attorney Docket No. BA-U-LON-00010	:	

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.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 6

SAMUELS, GAUTHIER &
STEVENS LLP
Suite 3300
225 Franklin Street
Boston MA 02110

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OFFICE OF PETITIONS

In re Application of	:	
Walmsley et al.	:	DECISION ON PETITION
Application No. 10/459,008	:	
Filed: June 11, 2003	:	
Attorney Docket No. 7206	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed July 3, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply to the Notice to File Missing Parts of Application mailed August 12, 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. No reply having been received, the above-identified application became abandoned on October 13, 2003. A courtesy Notice of Abandonment was mailed on September 10, 2004.

Petitioner has satisfied the requirements of 37 CFR 1.137(b). The petition included the required reply in the form of an executed declaration and late surcharge; the petition fee; and the required statement of unintentional delay. It is noted that the response indicates that a check for $65 for payment of the late surcharge is enclosed. However, no check is present. Pursuant to the accompanying general authorization, the surcharge is being charged to Deposit Account No. 19-0079.

The above-identified application has been abandoned for an extended period of time. The United States Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the United States Patent and Trademark Office).

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing, including processing of the responses submitted on petition filed July 3, 2006.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Janine Novatt
Weiss & Moy PC
4204 North Brown Avenue
Scottsdale, Arizona 85251

MAILED

APR 2 1 2004

Technology Center 2100

In re Application of: James D. Wilson et al.)
Application No. 10/459,013)
Filed: June 11, 2003)
For: METHOD AND SYSTEM FOR EFFICIENTLY RETRIEVING SECURED DATA BY SECURELY PRE-PROCESSING PROVIDED ACCESS INFORMATION)

DECISION ON PETITION FOR ACCELERATED EXAMINATION UNDER M.P.E.P. §708.02(VIII)

This is a decision on the petition filed on December 11, 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 supplemented by a submission filed February 26, 2004.

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 combined submissions meet 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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MARTIN & FERRARO, LLP
1557 LAKE O'PINES STREET, NE
HARTVILLE OH 44632

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OFFICE OF PETITIONS

In re Application of :
Shipp :
Application No. 10/459,020 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. 115.0016-01000 :
For: SURGICAL IRRIGATION
APPARATUS AND METHODS FOR USE

This is a decision on the petition filed August 23, 2006 under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The Office contended that the above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed December 2, 2004, which set an extendable period for reply of three (3) months. Having received no extension of time or reply, the Office considered the application abandoned on March 3, 2005. A Notice of Abandonment was mailed on June 29, 2005.

Petitioner has shown that the correspondence at issue was not received at the 1557 Lake O'Pines Street, NE address. However, when the December 2, 2004 non-final Office action was mailed, a different address was listed in Office records. Petitioner asserts that a Request for Customer Number Data Change was filed on July 24, 2003 via facsimile, but it was not entered into records for this application. Therefore, petitioner argues that the Office erred in mailing the December 2, 2004 non-final Office action to a former address of record and the application is not really abandoned.

Petitioner has provided a copy of the Request for Customer Number Data Change purportedly filed on July 24, 2003 via facsimile. It is noted that Anita Chou was the person who signed the certificate of facsimile transmission.

Under 37 CFR 1.8(b), correspondence is considered timely filed if petitioner: supplies (1) a copy of the previously transmitted correspondence with a signed certificate of transmission affixed thereto (2) a statement which attests on a personal knowledge basis to the previous timely transmission. (3) A copy of the sending unit's report confirming transmission may be used to support this statement. (4) Furthermore, under 37 CFR 1.8(c), the Office may require additional evidence to determine if the correspondence was timely filed.

MPEP 512 further explains: Applicant may notify the Office of the previous mailing or transmission and supply a duplicate copy of the previously mailed or transmitted correspondence and a statement attesting on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the person signing the statement did not sign the certificate of transmission, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission.

The petition is dismissed because Anita Chou, the person who signed the certificate of transmission, has not provided a statement of the previous timely transmission or Attorney Thomas H. Martin has not explained how he has firsthand knowledge of the previous timely transmission.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300– ATTN: Office of Petitions

Telephone inquiries 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

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United States Patent and Trademark Office
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MARTIN & FERRARO, LLP
1557 LAKE O'PINES STREET, NE
HARTVILLE OH 44632

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OFFICE OF PETITIONS

In re Application of :
Shipp :
Application No. 10/459,020 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. 115.0016-01000 :
For: SURGICAL IRRIGATION
APPARATUS AND METHODS FOR USE

This is a decision on the reconsideration petition, filed December 27, 2006 (Express Mail date December 26, 2006), under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed December 2, 2004, which set an extendable period for reply of three (3) months. Having received no extension of time or reply, the Office considered the application abandoned on March 3, 2005. A Notice of Abandonment was mailed on June 29, 2005.

Petitioner has shown that the correspondence at issue was not received at the 1557 Lake O'Pines Street, NE address. However, when the December 2, 2004 non-final Office action was mailed, a different address was listed in Office records. Petitioner asserts that a Request for Customer Number Data Change was filed on July 24, 2003 via facsimile, but it was not entered into records for this application. Therefore, petitioner argues that the Office erred in mailing the December 2, 2004 non-final Office action to a former address of record and the application is not really abandoned.

Under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The facsimile transmittal cover letter bears a proper certificate of mailing, dated July 24, 2003, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. In addition, the person signing the certificate, Anita Chou, had reasonable basis to expect that the correspondence would be transmitted on July 24, 2003.

Petitioner has provided a copy of the Request for Customer Number Data Change purportedly filed on July 24, 2003 via facsimile. Petitioner has submitted a copy of the confirmation report showing the July 24, 2003 transmission was successful. Anita Chou no longer works for the firm and her statement is not available. Anita Chou was Attorney Amedeo F. Ferraro's assistant on July 24, 2003.Attorney Ferraro has provided a statement regarding his personal knowledge of the successful July 24, 2003 facsimile transmission of the Customer Number Data Change.

Therefore, the Customer Number Data Change will be considered as filed on July 24, 2003 and the non-final Office action was mailed to an incorrect address. Accordingly, the petition is **GRANTED**, the June 29, 2005 Notice of Abandonment is hereby **vacated**, and the holding of abandonment withdrawn.

After the mailing of this decision, the application file will be forwarded to Technology Center A.U. 3763 for the re-mailing of the December 2, 2004 non-final Office action to the correct correspondence address.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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30 ROCKEFELLER PLAZA
44TH FLOOR
NEW YORK NY, 10112-4498

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OFFICE OF PETITIONS

In re Application of :
Peter Petzelbauer :
Application No.: 10/459,030 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No.: A35859 PCT USA A 071986 :

This is a decision on the petition, filed January 8, 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 November 13, 2006, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated November 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]

It is noted that, while there was no outstanding response required in this application, petitioner submitted a petition for a 2-month extension of time with the present petition. Since no extension is necessary, the $450 fee is being credited to counsel's deposit account.

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 1653 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-8

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BAYER MATERIAL SCIENCE LLC
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PITTSBURGH PA 15205

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OFFICE OF PETITIONS

In re Application of :
Gurtler, et al. :
Application No. 10/459,033 : DECISION ON PETITIONS
Filed: June 10, 2003 :
Attorney Docket No. PO7717-LeA :
35,758

This is a decision on the petition under 37 CFR 1.59, filed June 13, 2006.

The petition to expunge is **DISMISSED AS INAPPROPRIATE**.

As set forth in MPEP 724.05, a petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;

(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;

(C) the information has not otherwise been made public;

(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;

(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and

(F) the petition fee as set forth in 37 CFR 1.17(g) is included.

Here, the Examiner issued a double patenting rejection over Patent No. 6,784,243. On January 4, 2006, applicants filed a terminal disclaimer, making a disclaimer over Patent No. 6,748,243. On May 9, 2006, realizing the error, applicants filed a second terminal disclaimer, this time correctly over Patent No. 6,784,243.

With respect to this matter, MPEP 1490 states:

> In some instances a terminal disclaimer filed to obviate an obviousness type double patenting rejection will identify the wrong target application or patent (i.e., an application or patent which is not the basis for the double patenting rejection). In these instances, a replacement terminal disclaimer identifying the correct target application or patent would be required by the examiner. Once a correct replacement terminal disclaimer is received, the next Office action should make it clear that "the second terminal disclaimer replaces the first terminal disclaimer, and the first terminal disclaimer is thus void." A second terminal disclaimer fee should not be assessed/charged, since the first fee is applied to the second terminal disclaimer.

Accordingly, this is not a situation where a petition to expunge is appropriate.

The matter is being forwarded to Group Art Unit 1711 for consideration of the RCE filed December 28, 2006. **The Examiner's attention is directed to the replacement terminal disclaimer filed May 9, 2006.**

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Orum & Roth LLC
53 W Jackson Boulevard
Chicago IL 60604-3606

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OCT 16 2006

OFFICE OF PETITIONS

In re Application of :
KAWAHARA :
Application No. 10/459,063 : DECISION ON PETITION
Filed: June 11, 2003 : TO WITHDRAW
Attorney Docket No. 13501 : 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 16, 2006.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Catherine L. Gemrich.

Catherine L. Gemrich has been withdrawn as attorney or agent of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There is no outstanding Office action that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Patricia Volpe at 571-272-6825.

David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/20/2009

TO SPE OF : ART UNIT 1616

SUBJECT : Request for Certificate of Correction for Appl. No 10/459,073.: 7,205,420

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)

Should the change(s) Be made? Yes

RoChaun Johnson
Certificates of Correction Branch
571 272-0470

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: _____

_____

_____

_____

_____

/Frederick Krass/ **1612**
SPE
Art Unit

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MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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MAR 0 2 2009

OFFICE OF PETITIONS

In re Application of
Marcin Sawicki et al.
Application No. 10/459,089
Filed: June 11, 2003
Attorney Docket No. 60001.0243US01/MS 300521.

: DECISION GRANTING PETITION

This is a decision on the petition, filed December 19, 2008, under 37 CFR 1.137(b) and 37 CFR 1.137(f), 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 present nonprovisional application is the subject of a foreign or international application filed on May 21, 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 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. The projected publication date is June 11, 2009 and a copy of the communication regarding rescission is included herein.

The petition fee in the amount of $1620.00 has been applied.

This matter is being referred to Technology Center 2437 for further examination in due course.

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

ATTACHMENT: Communication Regarding Rescission of Nonpublication Request And/or Notice of Foreign Filing

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/459,089	06/11/2003	Marcin Sawicki	60001.0243US01/MS 300521.

CONFIRMATION NO. 1473

27488
MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

NONPUBLICATION RESCISSION LETTER

OC000000034793133

Date Mailed: 03/02/2009

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 06/11/2009.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

/pffaison ball/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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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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MAR 25 2005

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MAR 25 2005

OFFICE OF THE DIRECTOR
TC 3600

STOEL RIVES LLP
900 SW FIFTH AVENUE
SUITE 2600
PORTLAND, OR 97204

In re application of : **DECISION ON PETITION**
John Cimral et al. : **TO MAKE SPECIAL**
Application No. 10/459,113 : **(INFRINGEMENT)**
Filed: June 10, 2003 :
For: METHOD AND APPARATUS FOR FACILITATING MANAGEMENT OF INFORMATION TECHNOLOGY INVESTMENT

This is a decision on the petition under 37 C.F.R § 1.102(d) filed December 11, 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 December 11, 2003 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 December 11, 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.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/slb: 03/04/05

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STOEL RIVES LLP
900 SW FIFTH AVENUE
SUITE 2600
PORTLAND,OR 97204-1268

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MAR 2 2 2007

OFFICE OF PETITIONS

In re Application of

Stephen H. Vollum

Application No. 10/459,114

Filed: June 10, 2003

Attorney Docket No. 51025/2:1

: DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), December 12, 2006, in the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely file corrected drawings as required by the Notice of Allowability (the "Notice") mailed June 16, 2006. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on September 17, 2006. A Notice of Abandonment was mailed on October 19, 2006.

The corrected drawings were received on December 12, 2006.

The application is being forwarded to the Office of Patent Publications for processing.

Telephone inquiries concerning this matter may be directed to the undersigned, at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/459,125	06/11/2003	Vince Birleson	49581/P009D1/10307203	2500

7590 07/31/2009

R. Ross Viguet
FULBRIGHT & JAWORSKI L.L.P.
Suite 2800
2200 Ross Avenue
Dallas, TX 75201-2784

EXAMINER	
BROWN, RUEBEN M	

ART UNIT	PAPER NUMBER
2424	

MAIL DATE	DELIVERY MODE
07/31/2009	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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R. Ross Viguet
FULBRIGHT & JAWORSKI L.L.P.
Suite 2800
2200 Ross Avenue
Dallas TX 75201-2784

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JUL 31 2009

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of:
Vince Birleson
Application No. 10/459,125
Filed: June 11, 2003
For: Dual Mode Tuner For Co-Existing Digital and Analog Television Signals

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed July 10, 2009 under 37 CFR § 1.181 to withdraw the Notice of Non-Compliant Appeal Brief dated June 12, 2009 based on the failure of the Examiner to identify the appropriate grounds of rejection in the Final Rejection mailed October 20,2008.

A review of the record reveals that the examiner upon seeing the Petition corrected the grounds of rejection for claim 73 in a new Final Rejection (mailed July 28, 2009) to petitioner. Therefore, the Notice of Non-Compliant Appeal Brief dated June 12, 2009 is hereby withdrawn.

Accordingly, the petition is **DISMISSED.**

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-7294.

Christopher Grant
Workgroup Quality Assurance Specialist
Technology Center 2400

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Lisa A. Haile, J.D., Ph.D.
GRAY CARY WARE & FREIDENRICH LLP
Suite 1100
4365 Executive Drive
San Diego, CA 92121-2133

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AUG 0 4 2004
OFFICE OF PETITIONS

In re Application of :
Se-Jin Lee, et al. :
Application No. 10/459,127 : NOTICE
Filed: June 10, 2003 :
Attorney Docket No. JHU1200-12

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 Technology Center AU 1632 for examination in due course.

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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P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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SEP 29 2005

OFFICE OF PETITIONS

In re Application of :
Joseph F. Brewin, et al. :
Application No. 10/459,130 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. 00315-398001 / B669 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 22, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 5, 2005, using a Certificate of Mailing or Transmission under 37 CFR 1.8 dated June 30, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3673 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: FISH & RICHARDSON, P.C.
225 Franklin Street
Boston, MA 02110

[1]The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON CT 06484-6212

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SEP 14 2006
OFFICE OF PETITIONS

In re Application of :
Lanzerotti et al. :
Application No. 10/459,132 : DECISION GRANTING PETITION
Filed: 10 June, 2003 :
Atty Docket No. YOR920030057US1 :

This is a decision on the petition under 37 CFR 1.182, filed on 19 June, 2006, to change the sole named inventor's name.

The petition is **GRANTED**.

The last name of the first inventor will be changed from "Wisniewski" to -**Lanzerotti**--.

Petitioner states that the change of name occurred as a result of the first inventor's divorce, and has presented an affidavit signed by the inventor setting forth the procedure by which the name change occurred, as well as a copy of the Judgement of Divorce.

The inventor's name has been corrected in Office records. A corrected Filing Receipt is enclosed for petitioner's records.

It is noted that the fee for a petition under 37 CFR 1.182 is now $400.00. The balance of the fee due has been charged to counsel's deposit account.

The application is being referred to Technology Center Art Unit 2857 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

Encl: Corrected Filing Receipt

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
10/459,132	06/10/2003	2857	1506	YOR920030057US1	9	34	9

CONFIRMATION NO. 2260

CORRECTED FILING RECEIPT

OC000000020438246

29683
HARRINGTON & SMITH, LLP
4 RESEARCH DRIVE
SHELTON, CT 06484-6212

Date Mailed: 09/14/2006

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)

Mary Lanzerotti, Yorktown Heights, NY;
Emmanuel Yashchin, Yorktown Heights, NY;
Christina Landers, Wappingers Falls, NY;
Asya Takken, Brewster, NY;
Brian Trapp, Poughkeepsie, NY;

Assignment For Published Patent Application

International Business Machines Corporation

Power of Attorney:

Joseph Redmond Jr--18753
Robert Trepp--25933
John Hoel--26279
Christopher Hughes--26914
Stephen Kaufman--29551
Douglas Cameron--31596
Manny Schecter--31722
Daniel Morris--32053
Edward Pennington--32588
Richard Ludwin--33010

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 08/07/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/459,132

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

System for identification of defects on circuits or other arrayed products

Preliminary Class

702

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15 (b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other

agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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Alexandria, Virginia 22313-1450
www.uspto.gov

Stolowitz Ford Cowger LLP
621 SW Morrison St
Suite 600
Portland, OR 97205

Mail Date: 04/21/2010

Applicant	: Carl Walker	: DECISION ON REQUEST FOR
Patent Number	: 7583704	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/459,136	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1380** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Stolowitz Ford Cowger LLP
621 SW Morrison St
Suite 600
Portland, OR 97205

Mail Date: 05/18/2010

Applicant : Carl Walker
Patent Number : 7583704
Issue Date : 09/01/2009
Application No: 10/459,136
Filed : 06/10/2003

: 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 **1435** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this PTA calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2), and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this PTA calculation, including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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LERNER GREENBERG STEMER LLP
P.O. BOX 2480
HOLLYWOOD, FL 33022-2480

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MAR 21 2007

OFFICE OF PETITIONS

In re Patent No. 7,063,416 :
Issue Date: June 20, 2006 :
Application No. 10/459,156 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. 09991-110001 :

This is a decision on the petition filed July 28, 2006, which is being treated as a petition under 37 CFR 3.81(b)[1] to add assignee's name 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) 272-3210. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This application is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Irvin Dingle
Petitions Examiner
Office of Petitions

[1] See Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

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JUN 0 9 2005

OFFICE OF PETITIONS

In re Application of :
Richard Allen Hayes :
Application No. 10/459,161 : DECISION GRANTING PETITION
Filed: June 11, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. AD7020USNA :

This is a decision on the petition, filed June 8, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 29, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 1711 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

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

OFFICE OF PATENT COUNSEL
SPAWARSYCEN, CODE 20012
53510 SILVERGATE AVE. ROOM 103
SAN DIEGO, CA 92152-5765

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JUL 0 8 2005

OFFICE OF PETITIONS

In re Application of :
Schwartz, et al. :
Application No. 10/459,162 :
Filed: June 11, 2003 :
Attorney Docket No. 83920 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 5, 2004, to revive the above-identified application. The petition was recently forwarded to this office for consideration.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed 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 10, 2004.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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ANGENEHM LAW FIRM. LTD.
P.O. BOX 48755
COON RAPIDS MN 55448-0755

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APR 0 9 2009

OFFICE OF PETITIONS

ON PETITION

Patent No. 6,786,834	:	
Application No. 10/459,183	:	
Filed: June 11, 2003	:	
Issued: September 7, 2004	:	
Attorney Docket No. F599-002-PAT	:	

This is a decision on the petition under 37 CFR 1.378(c), filed January 16, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued September 7, 2004. The last day of the grace period for paying the 3.5-year maintenance fee was September 7, 2008. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record. Petitioner should note that a change of correspondence address would not affect the fee address. Therefore, if petitioner desires to receive future correspondence, which **may** be mailed regarding maintenance fees for the above-identified patent, the "fee address" and/or "customer number" forms should be submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: JOEL MATHESON
207 LEE PLACE
ALBERT LEA, MN 56007

UNITED STATES PATENT AND TRADEMARK OFFICE

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TOWNSEND AND TOWNSEND AND CREW LLP/ 015114
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

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MAR 03 2008

In re Application of :
Jayabrata Ghosh Dastidar, et. al. :
Application No. 10/459,187 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. 015114-065500US :

This is a decision on the petition under 37 CFR 1.137(b), filed on November 13, 2007, to revive the above-identified application.

The above application became abandoned for failure to file a proper reply to the final Office action mailed April 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 a Request for Continued Examination (RCE) under 37 CFR 1.114, with the $810 filing fee; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application is being revived for consideration of the RCE.

The application file is being referred to Technology Center Art Unit 2825, for consideration/entry of the previously submitted amendment filed on October 11, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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PO BOX 50784
DALLAS TX 75201

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OCT 23 2006

OFFICE OF PETITIONS

In re Application of :
Hongmiao Ji et al. :
Application No. 10/459,200 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. 40940-P002US :

This is a decision on the petition, filed September 6, 2006 under 37 CFR 1.137(b)[1], to revive the above-identified application.

The petition is **GRANTED**.

A Notice of Allowability, mailed January 4, 2006, required the submission of corrected drawings on or before April 4, 2006. This application became abandoned April 5, 2006. Accordingly, a Notice of Abandonment was mailed July 10, 2006.

This application is being forwarded to the Publishing Division for review of the drawings shown as having been received in the PTO on September 6, 2006.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[1] 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

Mailed: 1-18-06

MEB
Paper Number:

In re application of :
Cao et al. : DECISION ON
Serial No. 10/459,204 : PETITION
Filed: June 11, 2003 :
For: Synthesis Of Aluminophosphates And Silicoaluminophosphates

This is a response to the PETITION TO WITHDRAW ABANDONMENT, filed August 23, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of July 7, 2005, for failure to timely reply to the Office Action of December 28, 2004, be withdrawn. The petitioner asserts that the Office Action of December 28, 2004 was never received.

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.

Upon further review of the Office's records, a letter indicating that the Notice of Abandonment of July 7, 2005, was being withdrawn, was sent to the applicant on September 1, 2005 and the holding of abandonment was withdrawn.

Therefore, the instant Petition is **Moot**.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Frank E. Reid
ExxonMobil Chemical Company
Law Technology Department
P.O. Box 2149
Baytown, TX 77522

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:071805

DATE : July 18, 2005

TO SPE OF : ART UNIT 1744

SUBJECT : Request for Certificate of Correction on Patent No.: 6,898,819

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:

Changes to columns 12 and 14 involves changes in claims. Exact changes to the claims need to refer the changes to claim number and line.

SPE: John Kim **Art Unit** 1744

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

MEDLEN & CARROLL, LLP
Suite 350
101 Howard Street
San Francisco CA 94105

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MAY 0 3 2004

OFFICE OF PETITIONS

In re Application of :
Paul Ervin, Jr. :
Application No. 10/459,218 : DECISION REFUSING STATUS
Filed: June 11, 2003 : UNDER 37 CFR 1.47(b)
Attorney Docket No. UM-08146 :

This is decision on the petition filed under 37 CFR 1.47(a) on February 2, 2004 (certificate of mail date January 30, 2004), which is treated under 37 CFR 1.47(b).

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION**. Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed June 11, 2003, without an executed oath or declaration.

Accordingly, on July 30, 2003, a "Notice To File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration.

In response, on February 2, 2004 (certificate of mail date January 30, 2004), the present petition was filed, accompanied by the late filing surcharge, and a four (4) month request for extension of time.

At the outset, petitioner is advised that if none of the named inventor(s) will sign the oath or declaration, in this case only one inventor, a petition under 37 CFR 1.47(b) must be filed. If some of the named inventors signed the oath or declaration and one or

more of the named inventors have not signed the declaration, a petition under 37 CFR 1.47(a) must be filed. Although ten inventors have been named, the oath or declaration has not been executed by any of them, accordingly, this petition will be treated under 37 CFR 1.47(b).

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a statement of the last known address of the non-signing inventor;

(5) proof of proprietary interest, and

(6) proof of irreparable damage.

The petition lacks items(2), (5) and (6). In regards to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. A declaration in compliance with 37 CFR 1.63, 1.64, and 1.67 must be presented, signed by all of the signing inventors, if any. If no inventor(s) will sign the declaration, the declaration may be signed on behalf of the inventor by an assignee. The oath or declaration must be signed by an officer of the corporation (president, vice president, secretary, or treasurer) on behalf of and as agent for the non-signing inventor(s). The office must identify his/her title in the declaration, as well as his/her mailing address, residence, if the applicant lives at a different location from where he or she customarily receives mail, as well as the citizenship of individual signing on behalf of the non-signing inventor. If the oath or declaration is not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted.[1]

In regards to item (5), petitioner must provide proof that the Rule 1.47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application.[2] Petitioners should provide a copy of the employment agreement between the non-signing inventors and the Rule 1.47(b) applicant (company); a copy of an assignment agreement showing that the invention disclosed in the application is assigned to the Rule 1.47(b) applicant; or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 1.47(b) applicant.

In regards to item (6), petitioner must provide proof of irreparable damages in accordance with MPEP 409.03(g).

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[1] MPEP 409.03(b).

[2] MPEP 409.03(f).

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
Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper 9

MEDLEN & CARROLL, LLP
SUITE 350
101 HOWARD STREET
SAN FRANCISCO CA 94105

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of
Paul Ervin, Jr.
Application No. 10/459,218
Filed: June 11, 2003
Attorney Docket No. UM-08146

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

This is in response to the request for reconsideration filed September 7, 2004, under 37 CFR 1.47(b).

The petition is **GRANTED**.

A petition filed February 2, 2004 under 37 CFR 1.47(a) was treated under 37 CFR 1.47(b) and dismissed in a decision mailed May 3, 2004.

Comes now the instant request for reconsideration with a request for a two month extension of time filed September 3, 2004 (certificate of mail date).

Petitioners have indicated that the present application is a continuation from US Patent Application No. 09/643,476 which is a continuation of US Patent Application No. 08/994,076 and have provided a declaration from the '076 application duly executed by Mr. Ervin, the sole inventor in the instant matter, in compliance with 37 CFR 1.63 and 1.64. Additionally, petitioners have shown proprietary interest by providing a copy of the "Assignment Agreement" executed by Mr. Ervin in the '076 application, between the nonsigning inventor and the University of Michigan (the assignee) and has demonstrated that according status under 37 CFR 1.47(b) is necessary to prevent irreparable damage

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to the Office of Initial Patent Examination for further pre-examination processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

MAD

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IAP55
AUG 07 2006
PATENT & TRADEMARK OFFICE

Paper 9

MEDLEN & CARROLL, LLP
SUITE 350
101 HOWARD STREET
SAN FRANCISCO CA 94105

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SEP 20 2004
MEDLEN & CARROLL

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of
Paul Ervin, Jr.
Application No. 10/459,218
Filed: June 11, 2003
Attorney Docket No. UM-08146

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

This is in response to the request for reconsideration filed September 7, 2004, under 37 CFR 1.47(b).

The petition is **GRANTED**.

A petition filed February 2, 2004 under 37 CFR 1.47(a) was treated under 37 CFR 1.47(b) and dismissed in a decision mailed May 3, 2004.

Comes now the instant request for reconsideration with a request for a two month extension of time filed September 3, 2004 (certificate of mail date).

Petitioners have indicated that the present application is a continuation from US Patent Application No. 09/643,476 which is a continuation of US Patent Application No. 08/994,076 and have provided a declaration from the '076 application duly executed by Mr. Ervin, the sole inventor in the instant matter, in compliance with 37 CFR 1.63 and 1.64. Additionally, petitioners have shown proprietary interest by providing a copy of the "Assignment Agreement" executed by Mr. Ervin in the '076 application, between the nonsigning inventor and the University of Michigan (the assignee) and has demonstrated that according status under 37 CFR 1.47(b) is necessary to prevent irreparable damage

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to the Office of Initial Patent Examination for further pre-examination processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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OIPE IAP55
AUG 07 2006
PATENT & TRADEMARK OFFICE

Paper 10

PAUL ERVIN, JR. PhD
BIOTHERAPIES, INC.
5692 PLYMOUTH ROAD
ANN ARBOR, MI 48105

COPY MAILED

SEP 16 2004

OFFICE OF PETITIONS

In re Application of
Paul Ervin, Jr.
Application No. 10/459,218
Filed: June 11, 2003
For: Nucleotide and Protein Sequence of Mammastatin and Methods of Use

Dear Mr. Ervin:

You are named as the sole joint inventor in the above identified United States reissue 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 the sole inventor.

As the named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned Petitions Attorney at (703) 305-4497. Effective September 29, 2004, the telephone number will be (571) 272-3212. 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:
MEDLEN & CARROLL, LLP
SUITE 350
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SAN FRANCISCO CA 94105

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Fayang G. Qiu
5 Hackett Avenue, #3
Mountain View, CA 94043

In re Application of:
Mark A. Gallop, Kenneth C. Cundy,
Cindy X. Zhou, Fenmei Yao, Jia-Ning
Xiang, Ian R. Ollman, Fayang G. Qiu:
Application No.: 10/171,485
Filed: June 11, 2002
Title of Invention: PRODRUGS OF
GABA ANALOGS, COMPOSITIONS AND USES
THEREOF

COPY MAILED

APR 0 7 2003

OFFICE OF PETITIONS

LETTER

Dear Mr. Qiu:

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 Derek L. Woods 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: COOLEY GODWARD, LLP
3000 EL CAMINO REAL
5 PALO ALTO SQUARE
PALO ALTO, CA 94306

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Date Mailed : 4-5-06

Patent No.: 6,998,462
Patent Issued : February 14, 2006
Inventor(s) : Jlwen F. Duan, et. al.
Title: POLYESTER PROCESS
Docket No.: CH2934USNA

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.

The alleged error in claim 1, col. 21, lines 30-35 is printed in accordance with the record.

In view of the foregoing, your request is hereby denied. However, further consideration will be given upon receipt of a request for reconsideration directed to Decisions & Certificates of Correction Branch.

Eva James
For Cecelia B. Newman
Certificate of Correction Branch
(703) 308-9390 ext. 124 or ext. 102

Kathryn M. Sanchez
E. l. du Ponte de Nemours and Company
4417 Lancaster Pike
Wilmington, Delaware 19805

ej

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DUKE W. YEE
YEE & ASSOCIATES, P.C.
P.O. BOX 802333
DALLAS, TX 75380

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JUN 19 2008

OFFICE OF PETITIONS

In re Application of :
Motohiro Kawahito et al :
Application No. 10/459,253 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. JP920020099US1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 25, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 9, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is June 10, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This application is being referred to Technology Center AU 2192 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

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3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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JUL 29 2005

OFFICE OF PETITIONS

In re Application of :
Michael A. Brooks et al :
Application No. 10/459,263 : DECISION GRANTING PETITION
Filed: June 11, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 200209080-1 :

This is a decision on the petition, filed July 25, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on May 18, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2835 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

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Date Mailed : 11/25/08

Patent No. : 6794017 B2
Inventor : COMEAU, DOMINIC HAMEL
Patent Issued : 09/21/04
Docket No. : **SON-08-1145R**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Inspection of the file of the application for the patent reveals that in the Title Page at item (54) of the patent will be printed in accordance with the record (no fee or authorization to charge fee). **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

In view of the foregoing, your request in this matter is hereby denied.

Lamonte M. Newsome

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 305-8309 or (703)-308-9390 #112

Dana S. Rewoldt, Esq.
Advanta USA, Inc.
2369 - 330th Street
P.O. Box 500
Slater IA 50244

Cbn/Lmn

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AUG 3 1 2005

Director's Office
Group 3700

KAPLAN & GILMAN, L.L.P.
900 Route 9 North
Woodbridge, New Jersey 07095

In re Application of : DECISION ON PETITION
Edward Goldberg : TO MAKE SPECIAL
Serial No. : 10/459,317 : (INFRINGEMENT)
Filed : June 11, 2003 :
For : **CARABINER WRITING INSTRUMENT**

This is a decision on the petition under C.F.R. § 1.102(d) filed February 18, 2005, to make the above-identified application special. The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(h); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market; (B) that a rigid comparison of the alleged infringing device or product with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed February 18, 2005, includes all of the requirements above and, therefore, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications; (2) to promptly examine this application out of turn; and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference and appeal, if any, only if petitioner makes a prompt *bona fide* effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

Richard A. Bertsch, Director
Technology Center 3700
Phone: (571) 272-3750

rt/ 8/29/05

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KAPLAN GILMAN GIBSON & DERNIER LLP
900 ROUTE 9 NORTH
WOODBRIDGE NJ 07095

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JAN 0 3 2007

OFFICE OF PETITIONS

In re Patent No. 6,979,143 : DECISION GRANTING PETITION
Issue Date: 27 December, 2005 : UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/459,317 : REQUEST FOR CERTIFICATE OF
Filed: 11 June, 2003 : CORRECTION
Attorney Docket No. 287/8 :

This is a decision on the petition, filed 20 July, 2006, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application Nos. 29/179,838, 29/179,765, 29/179,764, 29/179,766, 29/179,839, and 29/180,486.

The petition is **granted**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional applications 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 11 June, 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 a prior-filed nonprovisional 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) 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 to the above-noted, prior-filed nonprovisional applications 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 design application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed applications. A determination that applicant is entitled to claim benefit of the prior-filed applications will be made by the Examiner prior to the mailing of a certificate of correction.

The $1,370.00 surcharge fee, as well as the $100.00 certificate of correction fee, have been received.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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United States Patent and Trademark Office
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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
10/459,317	06/11/2003	3751	1353	287/8	12	40	8

CONFIRMATION NO. 2444

27538
KAPLAN GILMAN GIBSON & DERNIER L.L.P.
900 ROUTE 9 NORTH
WOODBRIDGE, NJ 07095

CORRECTED FILING RECEIPT

OC000000021087182

Date Mailed: 11/02/2006

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)

Edward Goldberg, Teaneck, NJ;

Power of Attorney:

Jeffrey Kaplan--34356
Michael Gilman--34826
Timothy Gibson--40618

Domestic Priority data as claimed by applicant

This application is a CIP of 29/179,838 04/15/2003 PAT D,503,739
and is a CIP of 29/179,765 04/15/2003 PAT D,502,504
and is a CIP of 29/179,764 04/15/2003 PAT D,504,149
and is a CIP of 29/179,766 04/15/2003 PAT D,503,427
and is a CIP of 29/179,839 04/15/2003 PAT D,502,505
and is a CIP of 29/180,486 04/24/2003 PAT D,501,878

Foreign Applications

If Required, Foreign Filing License Granted: 08/08/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/459,317

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

CARABINER WRITING INSTRUMENT

Preliminary Class

401

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

In re Application of :
Talieh et al. :
Application No. 10/459320 : DECISION ON APPLICATION
Filed: 06/10/2003 : FOR PATENT TERM ADJUSTMENT
Attorney Docket Number: :
NVLUS.037C1C2 (5105C3) :

This is a decision on the "Application for Patent Term Adjustment Under 37 C.F.R. § 1.705", filed June 25, 2007. Applicant requests that the Determination of Patent Term Adjustment be corrected from 282 days, as indicated on the Determination of PTA mailed March 28, 2007, to an adjustment of 349 days.

The application for patent term adjustment is **DISMISSED**.

On March 28, 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 (PTA) to date is 282 days.

On June 25, 2007, applicant timely submitted the instant application for patent term adjustment[1]. Applicant requests that the Determination of Patent Term Adjustment be corrected from 282 days, as indicated on the Determination of PTA mailed March 28, 2007, to an adjustment of 349 days. In support of this request, applicant notes that the Information Disclosure Statement ("IDS") filed by Applicant on August 18, 2007 was filed in compliance with 37 CFR 1.704(d), and is therefore not subject to a Patent Term Adjustment under 37 CFR 1.704(c)(8). Applicant asserts that, "[w]ith respect to the first requirement...," the IDS included a certification under 37 CFR 1.97(e)(1). Petition at p.3. "With respect to the second requirement that said communication from said foreign patent Office was not received more than 30 days prior to the filing of the IDS, the supplemental European Search Report listing the cited reference was first received by an individual designated in § 1.56(c) less than 30 days prior to August 15, 2006." Id. Petitioner files with the petition a letter from Zinnecker Rechtsanwalt dated July 26, 2006 and stamped received August 1, 2006, attached as PTA Calculation Exhibit 2.

[1] PALM records show that the Issue Fee payment was received in the Office on June 25, 2007.

Applicant does not dispute the delay of 62 days attributed to Applicant under 37 CFR 1.704(b), for filing a reply to the non-final Office action, mailed January 11, 2006, more than three (3) months after the mail date of the Office action. Nor does Applicant dispute the delay of 1 day attributed to Applicant for filing the Request for Continued Examination ("RCE") more than three (3) months after the mail date of the final Office action, mailed September 11, 2006. Applicant calculates the delay at 412 days of office delay, minus 63 days of Applicant delay, for a PTA of 349 days.

37 CFR 1.704(c)(8) states:

> Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

The MPEP 2732 explains:

> 37 CFR 1.704(c)(8) establishes submission of a supplemental reply or other paper after a reply has been filed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of a supplemental reply or other paper (e.g., an information disclosure statement (IDS) or petition) after an initial reply was filed requires the Office to restart consideration of the initial reply in view of the supplemental reply or other paper, which will result in a delay in the Office's response to the initial reply. 37 CFR 1.704(c)(8) does not apply to a supplemental reply or other paper that was expressly requested by the examiner. If an amendment is requested by an examiner, the examiner will have the paper processed so that it is included as part of an interview summary or examiner's amendment and not a separate paper for PALM to flag in the patent term adjustment calculation. 37 CFR 1.704(c)(8) also provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or such other paper was filed.

However, 37 CFR 1.704(d), states:

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable. (Emphasis supplied).

The MPEP 2732 re-iterates as follows:

> 37 CFR 1.704(d) provides that a paper containing only an information disclosure statement in compliance with 37 CFR 1.97 and 1.98 will not be considered (result in a reduction) under 37 CFR 1.704(c)(6), 1.704(c)(8), 1.704(c)(9), or 1.704(c)(10) if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This provision will permit applicants to submit information first cited in a communication from a foreign patent office in a counterpart application to the Office without a reduction in patent term adjustment if an information disclosure statement is promptly (within thirty days of receipt of the first communication) submitted to the Office. Compliance with the statement requirement of 37 CFR 1.704(d) does not substitute for compliance with any relevant requirement of 37 CFR 1.97 or 1.98. 37 CFR 1.704(d) also provides that this thirty-day period is not extendable. (Emphasis supplied).

The circumstances of the mailing of the Notice have been considered. The applicable rule, 37 CFR 1.704(d), requires the IDS to be accompanied by two statements: a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

In this instance, Applicant filed a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application; however, Applicant failed to include a statement "that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement," at the time of filing the IDS on August 18, 2006.

Applicant failed to include a statement that complies with 37 CFR 1.704(d). As such, the delay of 67 days was thus properly attributed to Applicant.

The correct patent term adjustment (PTA) under 37 CFR §§ 1.702(b) and 1.704(c)(8) at the time of the allowance is two-hundred sixty-two (62 + 67 + 1 = 130) days of Applicant delay, minus four-hundred twelve (412) days of Office delay, or **two-hundred eighty-two (282) days**.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 282 days.

Applicant's deposit account has been charged the petition fee of $200.00 as authorized in the instant petition.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for

Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Derek L. Woods at (571) 272-3232.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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PO BOX 706
MONROE CT 06491-0706

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OCT 26 2005

OFFICE OF PETITIONS

In re Application of	:	
Ernest F. Hodson	:	
Application No. 10/459,326	:	ON PETITION
Filed: June 10, 2003	:	
Attorney Docket No. D-186	:	

This is a decision on the "Request to Reset the Date for Payment of the Issue Fee", filed March 11, 2005, and the petition to revive under 37 CFR 1.137(a), filed June 13, 2005.

The "Request to Reset the Date for Payment of the Issue Fee" is **DISMISSED**.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed November 22, 2004. The Notice of Allowance set a statutory period for reply of three (3) months. No issue fee having been received, the above identified application became abandoned on February 23, 2005. The mailing of this decision precedes the mailing of a Notice of Abandonment.

Petitioner states that he did not receive the Notice of Allowance until March 1, 2005, after the period for reply had already expired. In support thereof, petitioner has submitted a copy of the Office mailing envelope bearing a postmark date of February 1, 2005.

The Manual of Patent Examining Procedure states that the Office will grant a petition to restart the previously set period for reply to an Office action to run from the postmark date shown on the Office mailing envelope if the following criteria are met:

> (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
>
> (B) the reply period was for payment of the issue fee, or the reply period set was 1 month or 30 days; and
>
> (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the Office action showing the postmark date, and (3) a statement setting forth the date of receipt of the Office action at the correspondence address and stating that the Office action was received in the postmarked envelope.

Here, petitioner has not met requirement (C)(1). Petitioner has not submitted a copy of the Notice of Allowance bearing a date receipt stamp.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l); and (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. The instant petition lacks items (3) and (1).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable: "The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."[1]

Moreover, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay.[2]

---

[1] In re Mattulath, 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 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

[2] See Haines, 673 F. Supp. at 317, 5 U.S.P.Q. 2d at 1132; Vincent v. Mossinghoff, 230 U.S.P.Q. 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 U.S.P.Q. 1091 (D.D.C. 1981); Potter v. Dann, 201 U.S.P.Q. 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

With regards to item (3), there is no showing of record that precludes the possibility that petitioner received the Notice of Allowance with enough time remaining to timely pay the issue fee.

With regards to item (1), effective December 8, 2004, the issue fee was increased to $700.

Alternative Venue and Other Matters:

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently $750 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

cc: John R. Doherty
P.O. Box 706
Stevenson, CT 06491-0706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ATTORNEY JOHN R. DOHERTY
P.O. BOX 706
MONROE, CT 06491-0706

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AUG 18 2006
OFFICE OF PETITIONS

In re Application of :
Ernest F. Hodson :
Application No. 10/459,326 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. D-186 :

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 **DISMISSED**.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item 1. 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.

Effective December 8, 2004, the issue fee for a small entity was increased to $700. It is noted that petitioner submitted $985 for an issue fee payment of $685 and a $300 publication fee on June 13, 2005. Since the issue fee is being paid after December 8, 2004, the issue fee paid is deficient by $15. The application cannot be revived until the requisite issue fee is paid.

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 the issue fee deficiency and a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

It is again noted that 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. While a courtesy copy of this decision is being mailed to the address noted on the petition, all future correspondence regarding this application will be mailed to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail:
Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop PETITION
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: JOHN R. DOHERTY
P.O. BOX 706
STEVENSON, CT 06491-0706

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JOHN R. DOHERTY
P.O. BOX 706
STEVENSON, CT 06491-0706

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MAR 22 2007

OFFICE OF PETITIONS

In re Application of :
Ernest F. Hodson :
Application No. 10/459,326 : ON PETITION
Filed: June 10, 2003 :
Attorney Docket No. None :

This is a decision on the renewed petition, filed October 18, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED.**

A review of the record discloses that the above-identified application became abandoned for failure to respond in a timely manner to the Notice of Allowance/Allowability mailed November 22, 2004, which set a statutory period for reply of three (3) months. On April 3, 2006, a petition under 37 CFR 1.137(b) was filed. However, the petition was dismissed in a decision mailed August 18, 2006. In response, on October 18, 2006, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected drawings and the balance of the issue fee; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay[1].

The application is being referred to the Office of Publications to oversee the review of the drawing filed October 18, 2006.

Telephone inquires related to this decision may be directed to the undersigned at (571) 272-3204. Status inquires related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

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Patent Docket Department
Armstrong Teasdale LLP
One Metropolitan Square
Suite 2600
St. Louis, MO 63102-2740

Mail Date: 04/20/2010

Applicant	: Ashish A. Pandya	: DECISION ON REQUEST FOR
Patent Number	: 7627693	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/459,350	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **810** 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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WILMINGTON, DE 19805

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OFFICE OF PETITIONS

In re Patent No. 6,803,847
Issue Date: October 12, 2004
Application No. 10/459,358
Filed: June 11, 2003
Attorney Docket No. CLI819 USDIV

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed October 22, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on October 12, 2008 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

Rajnesh Krishnamurthy

for Thurman Page
Petitions Examiner
Office of Petitions

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PTO/SB/65 (08-08)
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Docket Number (Optional): CL1818 US DIV

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Mail to: Mail Stop Petition
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P.O. Box 1450
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Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 6,803,847 Application Number 10/459,358

Issue Date 10-12-2004 Filing Date 06-11-2003

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue 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).

Also complete the following information, if applicable

The above - identified patent:

☐ is a reissue of original Patent No. _____, original issue date _____;
original application number _____,
original filing date _____.

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____ filed on _____.

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

October 22, 2008
Date

Signature

Nancy M. Cochran
Typed or printed name of person signing Certificate

10/27/2008 DALLEN 00000005 041928 6803847
01 FC:1551 980.00 DA
02 FC:1558 1640.00 DA

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. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

OCT 22 2008

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1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
☑ $ 980.00	3 1/2 yr fee	(1661)	☐ $ _____	3 1/2 yr fee	(2551)
☐ $ _____	7 1/2 yr fee	(1552)	☐ $ _____	7 1/2 yr fee	(2552)
☐ $ _____	11 1/2 yr fee	(1553)	☐ $ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED $ 980.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of $ 1,640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED $ 1,640.00

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of $_____.

☑ Please charge Deposit Account No. 04-1928 the sum of $ 2,620.00.

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☑ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. 04-1928.

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OCT 2 2 2008

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7. OVERPAYMENT

As to any overpayment made please

☑ Credit to Deposit Account No. 04-1928

OR

☐ Send refund check.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

Signature(s) of Petitioner(s) — October 22, 2008 (Date)

Jessica M. Sinnott (Typed or printed name(s)) — 34,015 (Registration Number, if applicable)

302-992-4895
Telephone Number

E. I. du Pont de Nemours and Company
Address

4417 Lancaster Pike, Barley Mill Plaza, Bldg. 25, Wilmington, DE 19805
Address

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."

ENCLOSURES:

☑ Maintenance Fee payment

☑ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

☐ _____

PAGE 15/15 * RCVD AT 10/22/2008 2:53:05 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/29 * DNIS:2738300 * CSID:302 892 7949 * DURATION (mm-ss):02-42

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Certificate of Transmission under 37 CFR 1.8

USPTO Fax No.: (571) 273-8300

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office

on OCTOBER 22, 2008
Date

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Signature

NANCY M. COCHRAN
Typed or printed name of person signing Certificate

Registration Number, if applicable

302-892-7756
Telephone Number

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10/459358
CL1819USDIV

U.S. Patent No. 6,803,847

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

This collection of information is required by 37 CFR 1.8. 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 1.8 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.**

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10/12/08

Patent Bibliographic Data				12/17/2008 12:35 PM	
Patent Number:	6803847		**Application Number:**	10459358	
Issue Date:	10/12/2004		**Filing Date:**	06/11/2003	
Title:	SEGMENTED INDUCTION ELECTRIC MACHINE WITH INTERDIGITATED DISK-TYPE ROT				
Status:	Petition filed 10/22/2008 no decision			**Entity:**	Large
Window Opens:	10/12/2007	**Surcharge Date:**	04/15/2008	**Expiration:**	N/A
Fee Amt Due:	$0.00	**Surchg Amt Due:**	$0.00	**Total Amt Due:**	$0.00
Fee Code:					
Surcharge Fee Code:					
Most recent events (up to 7):	10/22/2008 04/21/2008	Petition Related to Maintenance Fees Filed. Maintenance Fee Reminder Mailed. --- End of Maintenance History ---			
Address for fee purposes:	E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1122B 4417 LANCASTER PIKE WILMINGTON, DE 19805				

NOTE: All USPTO fees are subject to change. If you are making a payment by mail or fax, please visit this link or contact the Maintenance Fee Branch (571-272-6500) to confirm the amount due on the date payment is to be made. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.

Run Another Query

RAM Fee History Query

Revenue Accounting and Management

Name/Number: 6803847

Total Records Found: 2

Start Date: Any Date

End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
10/27/2008	00000005	2	1551	$980.00	10/22/2008	DA 041928
10/27/2008	00000006	2	1558	$1,640.00	10/22/2008	DA 041928

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OFFICE OF PETITIONS

In re Application of	:	
Eduard Cartier et al	:	
Application No. 10/459,360	:	DECISION GRANTING PETITION
Filed: June 10, 2003	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 02-409-A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 21, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit formal drawings in a timely manner in reply to the Notice of Drawing Inconsistency with Specification mailed May 9, 2006, which set a period for reply of one (1) month or thirty days, whichever is longer. No extensions of time under the provisions of 37 CFR 1.136(a) were available. Accordingly, the above-identified application became abandoned on June 10, 2006. A Notice of Abandonment was mailed on August 22, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment to the specification to refer to Figure 3d, (2) the $1,500 petition fee, and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of May 9, 2006 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division for appropriate processing in accordance with this decision reviving the application.

Frances Hicks
Petitions Examiner
Office of Petitions

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180 SOUTH 600 WEST
LOGAN UT 84321

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OFFICE OF PETITIONS

In re Application of :
Fallin et al. :
Application No. 10/459,375 : DECISION ON PETITION
Filed: 11 June, 2003 :
Attorney Docket No. 13447.35 :

This is a decision on the petition filed on 28 July, 2006, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 15 June, 2006, for failure to timely submit corrected drawings as required by the Notice of Allowability mailed on 14 March, 2006, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 20 July, 2006.

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[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Receipt of the corrected drawings is acknowledged.

It is noted that the petition fee was paid in the small entity amount, although small entity status has not been established, and the basic filing fee was paid in the large entity amount. In accordance with MPEP 509.03, the payment of any small entity fee other than those set forth in paragraph (c)(3) of MPEP 509.03 (*e.g.*, the basic filing fees) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or patent. As such, it appears that the small entity petition fee was paid in error, and the large entity amount is due. Since the Fee Transmittal authorizing payment of the petition fee contains a general authorization, the balance due for a large entity petition fee will be charged to counsel's deposit account.

This application is being referred to the Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Ladas & Parry
26 West 61 Street
New York, NY 10023

Mail Date: 05/05/2010

Applicant	: Yoshihiro Yano	: DECISION ON REQUEST FOR
Patent Number	: 7620585	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/459,377	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/11/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1125** 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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IRVINE, CA 92614

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OFFICE OF PETITIONS

In re Patent No. 7,033,294
Issue Date: April 25, 2006
Application No. 10/459,384
Filed: June 11, 2003
Patentee(s): Jason L. Chamberlain, et. al.

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on December 5, 2006. 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**. Therefore, status as a small entity has been removed and all future fees paid must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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PERKINS COIE, LLP
P.O. BOX 1247
PATENT - SEA
SEATTLE WA 98111-1247

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OFFICE OF PETITIONS

In re Application of
Robert D. Briggs
Application No. 10/459,396
Filed: June 10, 2003
Attorney Docket No. **03004.8097US**

ON PETITION

This is a decision on the petition filed March 20, 2007 to withdraw the holding of abandonment for the above-identified application. The petition is treated under 37 CFR 1.181.

The petition to withdraw the holding of abandonment is **GRANTED**.

The application was held abandoned on November 20, 2006 for failure to file a timely response to the non-Final Office Action mailed August 17, 2006, 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 March 14, 2007.

Petitioner asserts that a proper response, was mailed on November 16, 2006. In support, petitioner submits a copy of the reply said to have been filed, but not acknowledged, with the U.S. Patent and Trademark Office, which includes a certificate of mail, dated November 16, 2006, pursuant to 37 CFR 1.8.

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 1742 for appropriate action on the amendment filed November 16, 2006, a copy of which was submitted upon petition on March 20, 2007.

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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ATLANTA, GA 30309-3592

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NOV 1 2 2003

OFFICE OF PETITIONS

In re Application of :
Peeter Todd Mannik et al :
Application No. 10/459,397 : DECISION GRANTING STATUS
Filed: June 11, 2003 : UNDER 37 CFR 1.47(A)
For: SYSTEM AND METHOD FOR :
PROVIDING INTERACTIVE ELECTRONIC :
REPRESENTATIONS OF OBJECTS :

This is in response to the petition under 37 CFR 1.47(a), filed September 29, 2003.

The petition is granted.

Petitioner has shown that the non-signing 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 inventor 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.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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JAMES EDWIN HARRIS III
1583 BRIARVISTA WAY
ATLANTA, GA 30329

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NOV 1 2 2003

OFFICE OF PETITIONS

In re Application of
Mannik; Hyser; Headrick; Whitley; Hutchinson; Mignone; Davis; and Harris
Application No. 10/459,397
Filed: June 11, 2003
For: SYSTEM AND METHOD FOR PROVIDING INTERACTIVE ELECTRONIC REPRESENTATIONS OF OBJECTS

Dear Mr. Harris:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
SMITH GAMBRELL & RUSSELL
SUITE 3100, PROMENADE II
1230 PEACHTREE STREET NE
ATLANTA, GA 30309-3592

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GARLAND TODD HEADRICK
3309 HIDDEN TRAIL ROAD, SE
SMYRNA, GA 30082

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OFFICE OF PETITIONS

In re Application of
Mannik; Hyser; Headrick; Whitley; Hutchinson; Mignone; Davis; and Harris
Application No. 10/459,397
Filed: June 11, 2003
For: SYSTEM AND METHOD FOR PROVIDING INTERACTIVE ELECTRONIC REPRESENTATIONS OF OBJECTS

Dear Mr. Headrick:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
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SMITH, GAMBRELL & RUSSELL, LLP
Suite 3100, Promenade II
1230 Peachtree Street, N.E.
Atlanta, GA 30309-3592

In re application of
Peeter Todd Mannik et al.
Application No. 10/459,397
Filed: June 11, 2003
For: SYSTEM AND METHOD FOR PROVIDING INTERACTIVE ELECTRONIC REPRESENTATIONS OF OBJECTS

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed November 05, 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 November 05, 2003 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 November 05, 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/pav: 03/30/05

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ATLANTA, GA 30309-3592

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OFFICE OF PETITIONS

In re Application of :
Mannik et al. :
Application No. 10/459,397 :
Filed: June 11, 2003 : ON PETITION
Atty Docket No.: 044110.008CIP :

This is a decision in response to the Petition Under 37 CFR 1.47 Regarding Nonsigning Inventor, filed March 27, 2006, requesting the Declaration Under 37 C.F.R. § 1.131 be made by the signing inventors on behalf of themselves and the nonsigning inventor. The petition is properly treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR 1.131 to the extent that it requires all of the named inventors execute the declaration filed thereunder[1].

This Petition is hereby **granted**.

Petitioner's assert that the claimed invention, the subject matter of which is described and claimed in the above identified application, was conceived prior to the effective date of the reference, and was diligently reduced to practice by all of the application's named inventors. Petitioner's further assert that, after diligent effort, inventor Kristopher Hutchinson, is unavailable.

In support of this assertion, Petitioner's file the Declaration of Peeter Todd Mannik which establishes that non-signing inventor, Kristopher Hutchinson, refuses to sign the declaration.

---

[1] Rule 47 only applies where, in the first instance, the signature of an originally named, or to be added, inventor can not be obtained. As all of the inventors executed the original declaration, filed February 1, 2001, and thus made the application, 37 CFR 1.47 no longer applies to this case. See, 37 CFR 1.47; MPEP 201.03. Rather, the remedy lies under 37 CFR 1.183 when a required affidavit or declaration of a prior invention to overcome a cited patent or publication, under 37 CFR 1.131, is not executed in whole or in part by a previously signing inventor. See, MPEP 715.04.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent they require Peeter Todd Mannik, Stephen Hyser, Garland Headrick, David Whitley, Kristopher Hutchinson, Rober Mignone, Arthur Davis and James Harris III to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the references and that the claimed invention was the product of joint inventors. See, In re Carlson, 79 F.2d 900, 27 USPQ 400 (CCPA 1935).

The application is being referred to Technology Center 3622.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Mannik et al.	:	
Application No. 10/459,397	:	ON PETITION
Filed: June 11, 2003	:	
Attorney Docket No. 044110.008CIP	:	

This is a decision on the petition under 37 CFR §1.102(d), filed November 5, 2003, to make the above-identified application special.

The petition requests that the above-identified application be made special under the accelerated examination procedure set forth in M.P.E.P. § 708.02, Section II: Infringement.

The petition is **GRANTED.**

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition complies with all the above stated requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquires concerning this decision should be directed to 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.

This matter is being referred to the Technology Center Art Unit 3622 for expedited prosecution.

David Bucci
Petitions Examiner
Office of Petitions

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IRVINE CA 92614

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OFFICE OF PETITIONS

In re Patent No. 7,052,028 :
Issued: May 30, 2006 :
Application No. 10/459,398 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No: SPECBIC.144A :

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed December 4, 2006, which is treated under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc.. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted and has been charged to deposit account no. 11-1410. The petition is **GRANTED** and status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Paper No.02212006

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THE WEBB LAW FIRM, P.C.
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PITTSBURGH PA 15219

In re Application of:
SCHIEBEL, HANS-JORG, et al.
Serial No.: 10/459404
Filed: June 11, 2003
Attorney Docket No.: **964-030696**

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 and an office action will be mailed to the Applicant.

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed August 23,2005 is 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 Kamand Cuneo at (571) 272-1957.

The above-identified application is being forwarded to the examiner for prompt appropriate action.

Richard K. Seidel, Director
Technology Center 2800

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FEB 22 2006

OFFICE OF PETITIONS

In re Application of :
David Richard FRERIKS et al. :
Application No. 10/459,417 : DECISION ON PETITION
Filed: June 11, 2003 : TO MAKE SPECIAL UNDER
Attorney Docket No. 3518 : 37 CFR 1.102(c)(2)
:

This is a decision on the petition under 37 CFR 1.102(c)(2)(iii), filed September 8, 2003, to make the above-identified application special based on the invention materially contributing to countering terrorism as set forth in M.P.E.P. § 708.02, Section XI.

The petition is **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(2)(iii) and MPEP § 708.02, Section XI: Inventions for Countering Terrorism, should state that special status is sought because the invention materially contributes to countering terrorism. 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...

If the disclosure it not clear on its face that the claimed invention is materially directed to countering terrorism, the petition must be accompanied by a statement by the applicant, assignee or a registered attorney/agent explaining how the materiality standard is met. 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. No fee is required.

The USPTO's final rule amending 37 CFR 1.102(c)(2) states:

> The materially standard does not permit an applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism. Nor does such standard permit an applicant to enjoy the benefit of advance examination merely because some minor aspect of the claimed invention may be directed to countering terrorism...[Response to Comment 65] applicants should not expect to have their petitions granted without a clear demonstration that the claimed invention is materially related to countering terrorism. 69 Fed. Reg. 56511 (Sept. 21, 2004)

Petitioner's submission fails to meet the criteria set out with respect to countering terrorism in M.P.E.P. §708.02(XI). The claimed invention is not specifically directed to bioterrorism activity, rather the claimed apparatus could be used for protection against any type of biological material. Further steps would be required to actually offset or nullify terrorism. As a result, no advancement in the technology of countering terrorism has been persuasively shown.

The petition fee of $130 is unnecessary and will be credited toward petitioner's Deposit Account No. 14-1131 in due course.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300

Telephone inquiries concerning this decision should be directed to David Bucci at 571-272-7099.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 3743 for action in its regular turn.

David Bucci
Petitions Examiner
Office of Petitions

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APR 0 6 2006

OFFICE OF PETITIONS

In re Application of	:	
David Richard FRERIKS et al.	:	
Application No. 10/459,417	:	DECISION ON PETITION
Filed: June 11, 2003	:	TO MAKE SPECIAL UNDER
Attorney Docket No. 3518	:	37 CFR 1.102(c)(2)
	:	

This is a decision on the renewed petition under 37 CFR 1.102(c)(2)(iii), filed March 16, 2006, and resubmitted March 20, 2006, to make the above-identified application special based on the invention materially contributing to countering terrorism as set forth in M.P.E.P. § 708.02, Section XI.

The petition is **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(2)(iii) and MPEP § 708.02, Section XI: Inventions for Countering Terrorism, should state that special status is sought because the invention materially contributes to countering terrorism. 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...

If the disclosure it not clear on its face that the claimed invention is materially directed to countering terrorism, the petition must be accompanied by a statement by the applicant, assignee or a registered attorney/agent explaining how the materiality standard is met. 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. No fee is required.

The USPTO's final rule amending 37 CFR 1.102(c)(2) states:

> The materially standard does not permit an applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism. Nor does such standard permit an applicant to enjoy the benefit of advance examination merely because some minor aspect of the claimed invention may be directed to countering terrorism...[Response to Comment 65] applicants should not expect to have their petitions granted without a clear demonstration that the claimed invention is materially related to countering terrorism. 69 Fed. Reg. 56511 (Sept. 21, 2004)

Petitioner's submission fails to meet the criteria set out with respect to countering terrorism in M.P.E.P. §708.02(XI). The claimed invention is not specifically directed to bioterrorism activity, rather the claimed apparatus could be used for protection against any type of biological material. Further steps would be required to actually offset or nullify terrorism. As a result, no advancement in the technology of countering terrorism has been persuasively shown.

Petitioner further argues in this renewed petition that: (1) MPEP 708.02(XI) only requires a statement explaining how the invention is materially related to countering terrorism; and (2) there is no requirement in the MPEP that the invention be exclusive to countering terrorism.

MPEP 708.08(XI) states in part:

If the application disclosure is not clear on its face that the claimed invention is materially directed to countering terrorism, the petition must be accompanied by a statement under 37 CFR 1.102 by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the invention materiality contributes to countering terrorism. The materiality standard does not permit an applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism. Nor does such standard permit an applicant to enjoy the benefit of advanced examination merely because some minor aspect of the claimed invention may be directed to countering terrorism.

Initially, it is noted that the application disclosure is directed to the prevention of disease retransmission in general and user comfort, and is not clear on its face that the claimed invention is materially directed to countering terrorism, as defined in 18 U.S.C. 2331. As such applicant provided a statement as to how the invention materially contributes to countering terrorism. Applicant's statement indicates that the invention would prove helpful to civil defense against bioterrorism attacks. However, applicant's statement is merely speculation as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism. Further steps would be required to actually offset or nullify terrorism; furthermore, as the invention is directed to user comfort and wearability, only some minor aspect of the invention would be related to countering terrorism. Accordingly, as applicant's statement is mere speculation as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism and is only directed to a minor aspect of countering terrorism, applicant is not entitled to enjoy the benefit of advanced examination.

The renewed petition further indicates that petitioner desires the application to be made special to seek start-up funding and minimize the time-to-market of the invention. Petitioner may consider seeking special status for the above-identified application special under 37 CFR 1.102(d) and MPEP 708.02. Section I.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300

Telephone inquiries concerning this decision should be directed to David Bucci at 571-272-7099.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 3743 for action in its regular turn.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 07/06/2010

Applicant	: Randy Miller	: DECISION ON REQUEST FOR
Patent Number	: 7664822	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/459,421	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/10/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **971** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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ALEXANDRIA, VA 22313-1450
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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

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MAY 0 4 2007

OFFICE OF PETITIONS

In re Patent No. 7,142,178 :
Issued: November 28, 2006 : LETTER REGARDING PTA AND
Application No. 10/459,434 : CERTIFICATE OF CORRECTION
Filed: June 12, 2003 :
Atty. Dkt. No.: 02910.000060 :

This letter is in response to the "COMMENTS ON DETERMINATION OF PATENT TERM ADJUSTMENT," filed January 11, 2007. The Office thanks patentees for their good faith and candor in bringing this to our attention.

The above-identified application matured into U.S. Patent No. 7,142,178 on November 28, 2006. The patent issued with a patent term adjustment (PTA) of 319 days. Patentees indicate that the adjustment is thought to be longer than appropriate.

Patentees have not set forth a specific error in the calculation of PTA. However, a review of the calculation of PTA reveals that the correct determination is 264 days.

An adjustment of 376 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(1).

The adjustment of 376 days is properly reduced 112 days, rather than 57 days as previously calculated, under 37 CFR 1.704(c)(10). The adjustment began August 8, 2006, the date that drawings were submitted, and ended November 28, 2006, the date the patent issued. See, 37 CFR 1.704(c)(10)(i).

The Office communication mailed October 3, 2006 was not mailed in response to the drawing submission, but rather in response to previously submitted information disclosure statements.

Accordingly, at the time of issuance, the patent was entitled to an adjustment of 264 days.

As applicants are advising us of a potential error in providing too much patent term adjustment in this application, no fee is due in connection to this matter.

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 264 days.

Applicants are given 30 days to file a request for reconsideration of the instant decision. No additional time will be granted under 37 CFR 1.136.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A. Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

CC: Draft Certificate of Correction

Adjusted Date Calculation (PTA)

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

SUGHRUE MION, PLLC
401 Castro Street, Ste 220
Mountain View CA 94041-2007

In re Application of :
FOOTE, JONATHAN T., et. al. :
Serial No.: **10/459,470** :
Filed: June 12, 2003 : DECISION ON PETITION
For: **METHODS FOR MULTISOURCE COLOR NORMALIZATION** : *ACCEPTANCE OF COLOR DRAWINGS*

This is a decision on the petition under 37 C.F.R. § 1.84(a)(2) filed, December 29, 2006, requesting acceptance of color drawings.

The petition requests that the color drawings identified in figures 1 – 4, and 7 be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. §1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), 3 (three) set of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition was filed without the specification containing or an amendment to contain the language mentioned in the paragraph above.

The petition is **DENIED.**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include correction of the deficiency outlined above. The application will be held in the Technology Center for two months to await any request for reconsideration of this decision.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications

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Paper No. 5

Janet C. Donovan
7001 Shallowford Road
Chattanooga, TN 37421

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OCT 0 8 2004

OFFICE OF PETITIONS

In re Application of :
John J. Mankowski, et al. :
Application No. 10/459,497 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. N/A :

This is in response to the "Petition Under 37 CFR 1.47(a), filed November 21, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

Petitioner has not provided a statement as to whether the nonsigning inventor, John Mankowski, has been presented with a copy of the application papers (specification, including claims, drawings, and oath or declaration). Petitioner only states that, "Papers were sent to him via Airborne on July 31, 2003." Additionally, petitioner has not provided a statement as to whether Mr. Mankowski refuses to sign the application or cannot be located. MPEP 409.03(d) states:

"Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made...

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts. It is important that the statement contain facts as opposed to conclusions.

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney...It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray,* 115 USPQ 80 (Comm'r Pat. 1956).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

> When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

In view of the above, petitioner must supply a copy of the application papers to Mr. Mankowski as required. Upon the filing of a Request for Reconsideration, petitioner must demonstrate that a *bona fide* attempt was made to present the application papers (specification, including claims, drawings and oath or declaration) to the non-signing inventor. If there is an express written refusal to sign the declaration, a copy of the document evidencing a refusal should be submitted to the USPTO. If the non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration and any documentary evidence to support facts alleged in the affidavit or declaration should be submitted with the reconsideration request.

The application cannot be accorded Rule 47 status until it is shown that the nonsigning inventor was presented with a copy of the application papers, and cannot be reached or refuses to sign the application.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

U. S. Patent and Trademark Office
220 20th Street South
Customer Window, Mail Stop PETITIONS
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

Telephone inquiries 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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MAY 12 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

MICHAEL MOLINS
MOLINS & CO.
LEVEL 25 CHIFLEY TOWER
SYDNEY 2000 AU AUSTRALIA

In re application of:
Wyn-Harris et al.
Application No. 10/459,500
Filed: June 12, 2003
For: MOTION DETECTION CAMERA

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 4, 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 of the attorneys/agents of record 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: Michael Gegenheimer, ePIC North America
c/o Deepbridge
61 Broadway, Suite 800
New York, N.Y. 10006

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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

MICHAEL MOLINS
MOLINS & CO.
LEVEL 25 CHIFLEY TOWER
SYDNEY 2000 AU AUSTRALIA

In re application of:
Wyn-Harris et al
Application No. 10/459,504
Filed: June 12, 2003
For: INTERNET CAMERA

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address 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.

Requestor is not of record. 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

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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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

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APR 26 2005

OFFICE OF PETITIONS

In re Application of :
Hidehiro Soga, et al. :
Application No. 10/459,510 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. 7162-74 :

This is a decision on the petition, filed April 21, 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 4, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3753 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).

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Paper No. ____

CONNOLLY BOVE LODGE & HUTZ LLP
1990 M STREET NW, SUITE 800
WASHINGTON, DC 20036-3425

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OFFICE OF PETITIONS

In re Application of
Kazuya Yoshimura et al
Application No. 10/459,523
Filed: June 12, 2003
Attorney Docket No. 21581-00212-US2

: DECISION GRANTING PETITION
: UNDER 37 CFR 313(c)(2)

This is a decision on the petition, filed May 26, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on April 20, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

This matter is being referred to Technology Center AU 2871 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/459523

Paper No.: —

DATE : 2/14/06

TO SPE OF : ART UNIT 2883

SUBJECT : Request for Certificate of Correction on Patent No.: 6930746 B2

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Virginia Tolbert
Certificates of Correction Branch
Tel. No. 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:

[signature] SPE

2883 Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 08/03/2010

Applicant	: Akio Tanaka	: DECISION ON REQUEST FOR
Patent Number	: 7642620	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/459,524	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1972** 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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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

Mail Date: 04/21/2010

Applicant	: James G. Gatto	: DECISION ON REQUEST FOR
Patent Number	: 7665656	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/459,540	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **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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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

Mail Date: 05/18/2010

Applicant : James G. Gatto
Patent Number : 7665656
Issue Date : 02/23/2010
Application No: 10/459,540
Filed : 06/12/2003

: 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 **852** 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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KEATING & BENNETT LLP
8180 GREENSBORO DRIVE
SUITE 850
McLEAN, VA 22102

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SEP 2 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Masaya Tamura	:	
Application No. 10/459,552	:	DECISION GRANTING PETITION
Filed: June 12, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 36856.1068	:	

This is a decision on the petitions, filed September 27, 2005, under 37 CFR 1.313(b)(5) and 37 CFR 1.313(c)(2), which are being collectively treated as a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The petition under 37 CFR 1.313(b)(5), filed by Mr. Joseph R. Keating, is shown to have been originally transmitted by facsimile on May 18, 2005. However, there is no indication that this petition was ever associated with the record for the above file. The Information Disclosure Statement submitted with the petition under 37 CFR 1.313(b)(5) will be made of record for consideration by the Examiner.

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]

---

[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) 272-3218.

This matter is being referred to Technology Center AU 2874 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statements received September 27, 2005.

Frances Hicks
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : December 30, 2005

TO SPE OF : ART UNIT 2851

SUBJECT : Request for Certificate of Correction on Patent No.: 6,947,121

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

HENRY HUNG NGUYEN
PRIMARY EXAMINER

~~SPE~~

2851
Art Unit

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JAGTIANI + GUTTAG
10363-A DEMOCRACY LANE
FAIRFAX VA 22030

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AUG 28 2006

OFFICE OF PETITIONS

In re Application of :
Baruch, et al. :
Application No. 10/459,564 : DECISION ON PETITION
Filed: June 12, 2003 : TO WITHDRAW
Attorney Docket No. EMPI-0006-DV1 : 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 12, 2006.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Mark J. Guttag on behalf of all attorneys of record who are associated with customer No. 22506.

All attorneys/agents associated with the Customer Number 22506 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Martin C. Baruch at the address indicated below.

Telephone inquiries concerning this decision should be directed to April Wise at 571-272-1642.

April M Wise

April M Wise
Petitions Examiner
Office of Petitions

cc: Martin C. Baruch
c/o Empirical Technologies Corporation
PO Box 8175
Charlottesville, VA 22906

cc: David W. Gerdt
c/o Empirical Technologies Corporation
PO Box 8175
Charlottesville, VA 22906

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BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Kuang-Jung Chen et al :
Application No. 10/459,572 :
Filed: June 12, 2003 :
Attorney Docket No. CHEN 3548-Em :

This is a decision on the petition under 37 CFR 1.137(b), filed October 27, 2004, 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 April 26, 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 August 23, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed September 28, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. A one month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on August 26, 2004.

The above-identified application is being revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

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 $870 extension of time submitted with the petition on October 27, 2004 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 Wan Laymon at (571) 272-3220.

The file is being forwarded to Technology Center AU 2812 for processing of the request for continued examination (RCE) under 37 CFR 1.114.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

06 MAY 2004

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Richard C. Turner
Sughrue Mion, PLLC
2100 Pennsylvania Ave., N.W.
Suite 800
Washington, D.C. 20037

In re Application of	:	
KANAMARU et al.	:	
U.S. Application No.: 10/459,611	:	
PCT No.: PCT/JP01/10906	:	DECISION
Int. Filing Date: 12 December 2001	:	
Attorney Docket No.: Q75557	:	
For: FUEL SUPPLY APPARATUS	:	

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 12 December 2001, applicant filed international application PCT/JP01/10906. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 19 June 2003. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 12 August 2003.

On 12 June 2003, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia,: the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a declaration as required by 35 U.S.C. 371(c)(4). The application was treated as a filing under 35 U.S.C. 111(a).

DISCUSSION

Applicant's transmittal letter stated, "The following documents and fees are submitted herewith in connection with the above application for the purpose of entering the National stage under 35 U.S.C. § 371 and in accordance wit the Patent Cooperation Treaty". Despite this indication the papers were treated as a filing under 35 U.S.C. 111(a).

Applicant is urged to use the "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371" (Form PTO-1390) as the

transmittal letter when submitting papers under 35 U.S.C. 371 for entry into the national stage in the United States. A copy of this form is enclosed with this decision for applicant's convenience.

CONCLUSION

The application has an international filing date of 12 December 2001 under 35 U.S.C. 363 and a date of **12 June 2003** under 35 U.S.C. 371(c) and 102(e).

This application is being forwarded to the National Stage Processing Branch of the International Division for treatment in accordance with this decision, that is for preparation and mailing of the Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903). This application will then be forwarded to Group Art Unit 3747.

Harry C. Kim
PCT Special Programs Examiner
Office of PCT Legal Administration
Telephone: (703) 308-2248
Facsimile: (703) 308-6459

Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration

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OFFICE OF PETITIONS

In re Application of :
Luc Quellet, et al. :
Application No. 10/459,619 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No.: 14979-US :
:

This is a decision on the petition, filed December 27, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 11, 2005, in the above-identified application, cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2818 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1]The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: " Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

Charlette M. Crissman
400 Crestview Road
Columbus, OH 43202-2212

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APR 2 8 2005

OFFICE OF PETITIONS

In re Application of :
Hodapp and Greer :
Application No. 10/459,658 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. BG01U303

This is a decision on the petition under 37 CFR 1.137(a), filed January 14, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration or petition under 37 CFR 1.137(b) must be submitted within TWO (2) MONTHS from the mail date of this decision. Extension of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C § 704.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed June 7, 2004, which set a shortened statutory period for reply of three (3) months from its mailing date. No response was received within the allowable period, and the application became abandoned on September 8, 2004. A Notice of Abandonment was mailed on December 13, 2004.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due

[1]As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

The instant petition lacks item (3).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

---

[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Petitioner's Argument

Petitioner maintains that the delay in responding to the non-final Office action was unavoidable because on November 21, 2004, petitioner sustained a severe injury to petitioner's hand that necessitated surgery and a period of recuperation.

Application of the standard to the current facts and circumstances

With regard to item (3) above, the aforementioned argument of petitioner in support of petitioner's belief that the above-cited application was unavoidably abandoned is not persuasive. The reason petitioner's argument must necessarily fail are addressed below.

A successful petition under 37 CFR 1.137(a) must establish that the entire period of delay—beginning from the due date for a reply until the filing of a grantable petition—was unavoidable. In this case, the relevant period began on September 7, 2004, and continues to run presently. The injury that petitioner alleges was the cause for the delay did not occur until November 21, 2004. Even were it to be assumed that the injury was a cause for unavoidable delay, petitioner has not established that the entire delay was unavoidable as the period beginning September 7, 2004 until the time of injury is not covered. Accordingly, the petition is dismissed because it has not been established that the entire delay was unavoidable.

If petitioner chooses to file a renewed petition under 37 CFR 1.137(a), petitioner is cautioned to include documentary evidence to support petitioner's argument. These documents may include notes from the attending physician or medical records—with irrelevant personal information redacted.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1500.00 for a large entity and $750.00 for a verified small entity), and a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

---

[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

It is noted that a request for an extension of time under 37 CFR 1.1.36(a) within the third month was made, however, this request was made outside the maximum statutory period for reply and is not necessary. Accordingly, petitioner will be refunded $510.00, in due course.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64

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OFFICE OF PETITIONS

Charlette M. Crissman
400 Crestview Road
Columbus, OH 43202-2212

In re Application of :
Hodapp and Greer :
Application No. 10/459,658 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. BG01U303

This is a decision on the petition under 37 CFR 1.137(b), filed May 9, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed June 7, 2004, which set a shortened statutory period for reply of three (3) months from its mailing date. No response was received within the allowable period, and the application became abandoned on September 8, 2004. A Notice of Abandonment was mailed on December 13, 2004.

The amendment filed May 9, 2005, is noted.

The application is being forwarded to Technology Center 3700, GAU 3711 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

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P.O. BOX 980
VALLEY FORGE PA 19482-0980

In re Application of :
Takehiko Yamakawa et al :
Application No. 10/459,671 : ON PETITION
Filed: June 11, 2003 :
Attorney Docket No. MTS-3441US :

This is a decision on the petition, filed April 19, 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 23, 2005, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2817 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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Paper No. 5

HODGSON RUSS LLP
ONE M & T PLAZA
SUITE 2000
BUFFALO NY 14203-2391

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OCT 2 8 2003

OFFICE OF PETITIONS

In re Application of :
Enrique Trivelli :
Application No. 10/459,677 : ON PETITION
Filed: 11 June, 2003 :
Atty Docket No. 40043.0001 :

This is a decision on the petition filed on 9 September, 2003, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 11 June, 2003, with Figure 3 described in the specification as a part of the original disclosure.

The petition is **dismissed**.

On 11 June, 2003, the application was filed.

On 7 August, 2003, 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 11 June, 2003, but that Figure 3 described in the specification appeared to have been omitted from the application. A two (2) month period for reply was set.

In response, on 9 September, 2003, the present petition was filed, accompanied by one (1) sheet of drawings containing Figure 3. Petitioner concedes that Figure 3 was inadvertently omitted from the application as filed, but requests that the application, including Figure 3, be accorded a filing date of 11 June, 2003, because the application claims priority to a foreign application, Argentine Application No. P 02 01 02214, which petitioners submitted a copy of on 31 July, 2003. Petitioners assert that the foreign priority application contained Figure 3.

Petitioner's argument has been considered, but is not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals

that, *inter alia*, two (2) sheets of drawings containing Figures 1 and 2 were received on 11 June, 2003. No sheets of drawings containing Figure 3 were filed on 11 June, 2003, since no such sheets of drawings are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. As petitioners concede that the omitted drawing figures were not in fact filed on 11 June, 2003, the application cannot be accorded a filing date of 11 June, 2003, with Figure 3 as a part of the original disclosure.

It is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of MPEP 503.[1] This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, due to the absence in the record of a postcard receipt itemized with respect to the drawings that bears a USPTO date stamp of 11 June, 2003, showing that three (3) sheets of drawings, including Figure 3 were received in the USPTO on 11 June, 2003, the application cannot be accorded a filing date of 11 June, 2003, with Figure 3 as a part of the original disclosure.

Moreover, petitioner's assertion that Figure 3, which was omitted on filing and a part of a prior foreign application, is a part of the original disclosure, is not persuasive. A review of the record reveals that the drawings, as filed, consist of two (2) sheets of drawings containing Figures 1 and 2. The drawings as filed, however, do not contain Figures 3. Clearly Figure 3 was intended to be a part of this application. Whether Figure 3 was a part of a copending application is not an issue here since the copending application was not specifically incorporated by

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[1] The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (*O.G.*) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the *O.G.* that contains important *O.G.* notices of continuing relevance.

reference into the disclosure of this application.[2] The mere reference to another application is not an incorporation of anything therein into the application containing the reference.[3] To allow one to retroactively incorporate by reference a second application into a first application would allow the addition of matter into an application that was not present on filing which would be contrary to our statutes and rules. Still further, the question of new matter is not an issue here. Figure 3 was simply not filed in the USPTO on 11 June, 2003. Matter included in Figure 3 may be submitted as an amendment for consideration by the examiner under MPEP sections 608.02(p) and 608.04. In view of the above, the application cannot be accorded 11 June, 2003, as the application filing date with drawing Figure 3 as a part of the original disclosure.

Alternatively, as a copy of the priority document was supplied on 31 July, 2003, petitioner may request that the application, including Figure 3 as filed in the priority document on 31 July, 2003, be accorded a filing date of 31 July, 2003.

The application will be processed and examined using only the application papers present on 28 May, 2003. The copies of the one (1) drawing sheet containing Figure 3 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 forwarded to the Office of Initial Patent Examination for further processing with a filing date of 11 June, 2003, using 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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[2] See MPEP 608.01(p).

[3] See In re de Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973); Dart Industries v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980). In the present application, it is noted that a reference was made to the prior-filed foreign application on the declaration filed on 11 June, 2003.

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 04/20/2010

Applicant	: Basab Chatterjee	: DECISION ON REQUEST FOR
Patent Number	: 7598507	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/459,681	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/11/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1450** 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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ROBERT D. CRAWFORD
CIDRA CORPORATION
50 BARNES PARK NORTH
WALLINGFORD, CT 06492

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FEB 24 2005

OFFICE OF PETITIONS

In re Application of :
Russell et al. :
Application No. 10/459,687 : ON PETITION
Deposited: June 10, 2003 :
Title of Invention: :
ALIGNMENT AND IMAGING SYSTEM FOR :
WRITING BRAGG GRATINGS :

This is in response to the petition filed to revive the application under 37 CFR 1.137(a), filed February 10, 2005.

The petition under 37 CFR 1.137(a) is dismissed.

Any further petition to revive the above-identified application (under 37 CFR 1.137(a)), must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under 37 CFR 1.137", and be addressed to Petitions Attorney Derek L. Woods. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background:

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed July 30, 2004. The Notice set a non-extendable three (3) month period for reply. Applicant responded with an authorization to charge his deposit account the issue and publication fee; however, the deposit account contained insufficient fee to pay the issue fee. Accordingly, the application became abandoned on November 1, 2004[1]. A Notice of Abandonment was mailed January 20, 2005.

[1] Petitioner incorrectly states in the petition that the issue fee and publication fee were due on November 1, 2004. See MPEP 711.02(c).

The instant petition

Applicant files the instant petition and asserts that the delay was unavoidable because"[t]hrough miscommunication and failure to more closely monitor the Deposit account by the Finance Department, the account did not have sufficient funds to pay the issue fee." Petition at p.3.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (**1**) the required reply (unless previously filed), which may met by the filing of a notice of appeal and the requisite fee; a Request for Continued Examination; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (**2**) the petition fee as set forth in 37 CFR 1.17(l); (**3**) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (**4**) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Applicant lacks item (3) as set forth above.

Applicable Law

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.[2] 35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee ... at any time ... if the delay is shown *to the satisfaction of the Commissioner* to have been unavoidable." (emphasis added).

[2] The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, ... the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of those provisions is entitled to considerable deference." Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA)1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")).

"The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1787 (Fed. Cir. 1995) (citing In re patent No. 4,409,763, 7 U.S.P.Q.2d (BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)). However, "The question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."[3] Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.[4] The statute requires a "showing"

[3] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Finally, a "delay (in responding) resulting from the lack of knowledge or improper application of the patent statute, rules of practice, or MPEP, [] does not constitute unavoidable delay." MPEP 711.03(c).

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[4] 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).

Applicant's Assertion

asserts that the delay was unavoidable because "[t]hrough miscommunication and failure to more closely monitor the Deposit account by the Finance Department, the account did not have sufficient funds to pay the issue fee." Petition at p.3.

As to item (3), Applicant has failed to demonstrate that the delay in responding to the final Office action was unavoidable. As to Applicant's assertion, that the delay was unavoidable because of miscommunication and failure to more closely monitor the deposit account, this Office finds that a reasonable person, in relation to their most important business, would have insured that the funds were available in the deposit account to pay the issue fee. While the delay in paying the issue fee may have been unintentional, it was not unavoidable.

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently $750.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney/Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WALLINGFORD, CT 06492

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APR 2 7 2005

OFFICE OF PETITIONS

In re Application of :
Russell et al. :
Application No. 10/459,687 : ON PETITION
Deposited: June 10, 2003 :
Title of Invention: :
ALIGNMENT AND IMAGING SYSTEM FOR :
WRITING BRAGG GRATINGS :

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed March 10, 2005.

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed July 30, 2004. The Notice set a non-extendable three (3) month period for reply. Applicant responded with an authorization to charge his deposit account the issue and publication fee; however, the deposit account contained insufficient fee to pay the issue fee. Accordingly, the application became abandoned on November 1, 2004. A Notice of Abandonment was mailed January 20, 2005.

With the instant petition Applicant has submitted the issue fee.

This application is being referred to Publishing Division for processing into a patent.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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QUINTERO LAW OFFICE
1617 BROADWAY, 3RD FLOOR
SANTA MONICA, CA 90404

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JUN 0 7 2005

OFFICE OF PETITIONS

In re Application of	:	
Wang Cheng Chung	:	
Application No. 10/459,690	:	NOTICE
Filed: June 11, 2003	:	
Attorney Docket No. 10111952	:	

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 file is being referred to Technology Center Art Unit 3673, to await a response to the non-final Office action mailed April 11, 2005.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

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OCT 2 2 2007

OFFICE OF PETITIONS

In re Application of :
Heiko Gerber, et al. :
Application No. 10/459,700 : DECISION ON PETITION
Filed: June 12, 2003 : TO WITHDRAW
Attorney Docket No. 449122055800 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 18, 2007

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison & Foerster, LLP has been revoked by the assignee of the patent application on September 5, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: KEVIN R. SPIVAK
BELL, BOYD & LLOYD, LLC
70 WEST MADISON STREET
SUITE 3100
CHICAGO, IL 60602-4207

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2121 CRYSTAL DRIVE
ARLINGTON, VA 22202

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APR 21 2005

OFFICE OF PETITIONS

In re Application of :
Quentin Elias Diduck :
Application No. 10/459,715 : DECISION GRANTING PETITION
Filed: June 12, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 347-1 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 1, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned, by operation of law, for failure to timely reply within the three month shortened statutory period set in the non-final Office action mailed June 10, 2004. No extensions of time have been obtained. Accordingly, the date of abandonment of this application is September 11, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply (amendment); (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of June 10, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2811 for appropriate action on the concurrently filed amendment.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

9/24/03

Bromberg and Sunstein LLP
125 Summer Street
Boston MA 02110-1618

Dear Applicant:

The Box PGPub replacement drawings for application number 10/459,724 received on 8/11/03 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
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Signature of Reviewer, Office of Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

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MAR 22 2007

OFFICE OF PETITIONS

In re Application of :
Yoshinori Hasegawa, et al. :
Application No. 10/459,729 :
Filed: June 12, 2003 :
Attorney Docket No. 030656 :

ON PETITION

This is a decision on the petition, filed October 10, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

This application became abandoned for a failure to respond to a non-final Office action mailed April 5, 2006. This decision precedes the mailing of a Notice of Abandonment.

Petitioner seeks revival solely for obtaining copendency with a continuing application, in that the necessary continuity inadvertently was not maintained at the time of filing the continuing application.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The petition is found to comply with the requirements of 37 CFR 1.137(b).

Since this application is being revived for purposes of continuity with application No. 11/543,055, filed October 5, 2006, and continuity having been established by this decision reviving the above-captioned application, the above-captioned application is again abandoned in favor of the continuing application.

The offer to make the belated payment of the 3-month extension of time fee under 37 CFR 1.136(a) is unnecessary. Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Therefore, no extension of time fees are due on a petition for revival. In view thereof, the $510 extension of time fee submitted with the petition is being refunded to petitioner's deposit account.

Telephone inquiries concerning this matter may 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
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. 10/459,736 : UNDER 37 CFR 1.183 AND
Filed: June 12, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2000P13013WOUS :

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/EP01/12998, 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 3683 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BUCHANAN INGERSOLL, PC
ONE OXFORD CENTRE, 20TH FLOOR
301 GRANT STREET
PITTSBURGH, PA 15219

COPY MAILED

OCT 22 2007

OFFICE OF PETITIONS

In re Application of :
Elliot R. Ramberg, et al. :
Application No. 10/459,771 : DECISION ON PETITION
Filed: June 12, 2003 : TO WITHDRAW
Attorney Docket No. 030356 : 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 24, 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 Duane A. Stewart, III on behalf of all attorneys of record who are associated with this application.

All attorneys/agents associated with this application have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: ELLIOT R. RAMBERG
1310 NW 64TH AVENUE
HOLLYWOOD, FL 33024

cc: MARTIN MUNZER
CYGENE LABORATORIES, INC.
7786 WILES ROAD
CORAL SPRINGS, FL 33067

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/459,771	06/12/2003	Elliot R. Ramberg	030356

CONFIRMATION NO. 3109

Buchanan Ingersoll, P.C.
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, PA 15219

POWER OF ATTORNEY NOTICE

OC000000026387264

Date Mailed: 10/22/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/24/2007.

- 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.

/amwise/

Office of Initial Patent Examination (571) 272-4000 or 1-800-PTO-9199

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

IRVING KESCHNER
21535 HAWTHORNE BOULEVARD
SUITE 385
TORRANCE CA 90503

COPY MAILED

JAN 19 2007

OFFICE OF PETITIONS

In re Application of :
Eric M. Jaeger et al. :
Application No. 10/459,774 :
Filed: June 13, 2003 : DECISION ON PETITION
Title: GLOVE CONSTRUCTION : UNDER 37 C.F.R. §1.137(B)
WHEREIN PALM MATERIAL ROLLS :
OVER FINGERTIP :

This is a decision on the petition filed August 18, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R §1.113 in a timely manner to the final Office action mailed December 19, 2005, which set a shortened statutory period for reply of three months. An after-final amendment was received on March 20, 2006 (the amendment contained a certificate of mailing dated March 16, 2006), and an advisory action was mailed on April 10, 2006. No extensions of

1 A grantable petition pursuant to 37 C.F.R §1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

time under the provisions of 37 C.F.R §1.136(a) were obtained, and no further response was received. Accordingly, the above-identified application became abandoned on March 20, 2006. A notice of abandonment was mailed on June 27, 2006.

With the present petition, Petitioner has submitted the petition fee and the proper statement of unintentional delay. Petitioner has further included a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, and the associated fee.

No terminal disclaimer is required. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). The amendment of March 20, 2006 shall serve as the required submission.

As such, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the RCE can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[2]. 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

---

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 reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

OIPE JC32 JAN 21 2005 PATENT & TRADEMARK OFFICE

Pet. Dec. GP1732

PTO/SB/83 (09-04)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	10/459801
Filing Date	6/12/2003
First Named Inventor	D. Fraser
Art Unit	1732
Examiner Name	M. Calaianni
Attorney Docket Number	27644.88

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Approved
Jacqueline M. Stone, Director
Technology Center 1700
5/6/05

Please withdraw me as attorney or agent for the above identified patent application, and

- ☐ all the attorneys/agents of record.
- ☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- ☑ the attorneys/agents associated with Customer Number 000027683

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are: The basis for the request for withdrawal is 37 C.F.R. § 10.40(b) section 4, namely, the client informed us that our services were no longer needed.

Status of Application: Pending

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

☐ The address associated with Customer Number:

OR

☑ Firm or Individual Name	Klarquist Sparkman, LP				
Address	16th Floor World Trade Center 121 S. W. Salmon Street				
City	Portland	State	OR	Zip	97204
Country					
Telephone				Fax	
Signature					
Name	Warren B. Kice			Registration No.	22,732
Date	1/17/05			Telephone No.	214-651-5634

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

OIPE JC32 JAN 21 2005 PATENT & TRADEMARK OFFICE

GP1732 DFV Pet. Dec.

PTO/SB/83 (09-04)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	10/459801
Filing Date	6/12/2003
First Named Inventor	D. Fraser
Art Unit	1732
Examiner Name	M. Calaianni
Attorney Docket Number	27644.88

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Approved
JMStone
Jacqueline M. Stone, Director
Technology Center 1700
5/26/05

Please withdraw me as attorney or agent for the above identified patent application, and

☐ all the attorneys/agents of record.

☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or

☑ the attorneys/agents associated with Customer Number 000027683

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are: The basis for the request for withdrawal is 37 C.F.R. § 10.40(b) section 4, namely, the client informed us that our services were no longer needed.

Status of Application: Pending

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

☐ The address associated with Customer Number:

OR

☑ Firm or Individual Name	Klarquist Sparkman, LP				
Address	16th Floor World Trade Center 121 S. W. Salmon Street				
City	Portland	State	OR	Zip	97204
Country					
Telephone				Fax	

Signature			
Name	Warren B. Kice	Registration No.	22,732
Date	11/17/05	Telephone No.	214-651-5634

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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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. 10/459,813 :
Filed: June 11, 2003 :
For: **AUDIO AND VIDEO TRANSMISSION AND RECEIVING SYSTEM** :

DECISION ON PETITION
TO MAKE SPECIAL

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

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

BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN NC 28562

In re Patent No. 6,994,098 : DECISION GRANTING PETITION
Issue Date: February 7, 2006 : UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/459,815 : REQUEST FOR CERTIFICATE OF
Filed: June 12, 2003 : CORRECTION
Attorney Docket No. 2000P13038WOUS :

This is a decision on the petition, filed May 29, 2007, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. §§ 120 and 365(c) to international Application No. PCT/EP01/13846, filed November 27, 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 international 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 June 12, 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 a prior-filed international 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) 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 international 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.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

Any inquiries concerning this decision may be directed to Kenya A. McLaughlin, Petitions Attorney at (571) 272-3222.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

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
10/459,815	06/12/2003	1746	1180	2000P13038WOUS	13	2

CONFIRMATION NO. 3202

CORRECTED FILING RECEIPT

46726
BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

Date Mailed: 12/03/2007

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 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**

Applicant(s)

Michael Rosenbauer, Reimlingen, GERMANY;
Bernd Schessl, Dillingen, GERMANY;
Helmut Jerg, Giengen, GERMANY;

Assignment For Published Patent Application

BSH Bosch und Siemens Hausgerate GmbH, Munich, DE

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/EP01/13846 11/27/2001

Foreign Applications

GERMANY 10064120.2 12/21/2000

If Required, Foreign Filing License Granted: 08/05/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/459,815**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD FOR OPERATING A DISH WASHING MACHINE, AND A CORRESPONDING DISH WASHING MACHINE

Preliminary Class

134

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
FROM DIRECTORS OFFICE

SEP 13 2005

TECHNOLOGY CENTER 3600

CONSTANTINE N. COLYVAS
59 VALORIE ROAD
SOUTHHAMPTON, NY 11968

In re application of : **DECISION ON PETITION**
Constantine N. Colyvas : **TO MAKE SPECIAL**
Application No. 10/459,823 : **(APPLICANT'S AGE)**
Filed: June 11, 2003 :
For: AUTO ALARM TO PREVENT COLLATERAL DAMAGES OF AN OVER NAVIGABLE WATERS BRIDGE SECTION COLLAPSE DISASTER

This is a decision on the petition submitted on June 11, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **DISMISSED**.

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 form (10-7) provided is not signed by the applicant.

Any request for re consideration must be filled 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 outlined above. Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The enveloped should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until renewed petition is submitted, the application will be returned to the examiners 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
(571) 272-6587

KJD/slb: 09/07/05

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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MAIL

OCT 1 1 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

CONSTANTINE N. COLYVAS
59 VALORIE ROAD
SOUTHAMPTON, N.Y. 11968

In re Application of :
Constantine N. Colyvas :
Application No. 10/459,823 : DECISION ON PETITION
Filed: June 11, 2003 : TO MAKE SPECIAL
For: AUTO ALARM TO PREVENT :
COLLATERAL DAMAGES WHEN AN OVER :
NAVIGABLE WATERS BRIDGE SECTION
COLLAPSES

This is a decision on the petition under 37 C.F.R. §1.102 to make special filed September 26, 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 copy of his Drivers License evidencing that he is over 65 years of age.

Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 7

PAUL M. DENK
763 S. NEW BALLAS ROAD
ST. LOUIS, MO 63141

COPY MAILED

OCT 21 2004

OFFICE OF PETITIONS

In re Application of	:	
Held, Robert F.	:	
Application No. 10/459,839	:	ON PETITION
Filed: June 12, 2003	:	
Attorney Docket No. 7173	:	

This is a decision on the petition under 37 C.F.R. § 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 Application (Notice) mailed August 4, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 5, 2003. A Notice of Abandonment was mailed on September 9, 2004.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

MAILED

APR 10 2009

OFFICE OF PETITIONS

In re Application of
Gary R. Hammerslag
Application No.: 10/459,843
Filed: June 12, 2003
Attorney Docket No.: BOATEC.001CP3

ON PETITION

This is a decision on the petition, filed April 9, 2009, 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 3, 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3677 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

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 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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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 04/20/2010

Applicant	: Gary R. Hammerslag	: DECISION ON REQUEST FOR
Patent Number	: 7591050	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/459,843	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **277** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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John P. Cornely
Fay, Sharpe, Fagan, Minnich & McKee, LLP
7th Floor
1100 Superior Avenue
Cleveland, OH 44114-2518

MAILED

OCT 21 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re application of
Michael A. Keresman, III et al.
Application No. 10/459,849
Filed: June 12, 2003
For: UNIVERSAL MERCHANT PLATFORM FOR PAYMENT AUTHENTICATION

: **DECISION ON PETITION**
: **TO MAKE SPECIAL**
: **(ACCELERATED**
: **EXAMINATION)**

This is in response to the petition filed on July 12, 2004 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02, VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

Since all of the requirements for special status under MPEP § 708.02, VIII have been met, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/rwg: 10/21/04

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UNITED STATES DEPARTMENT OF COMMERCE
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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
10/459,860	06/12/2003	2817	880	TID-33601	4	10	2

CONFIRMATION NO. 3694

CORRECTED FILING RECEIPT

OC000000013769824

23494
TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Date Mailed: 09/09/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Franz Prexl, Niederding, GERMANY;
Wolfgang Steinhagen, Mauern, GERMANY;
Ralph Oberhuber, Kumhausen/Landshut, GERMANY;

Power of Attorney:

Bret J. Peterson--37417

Domestic Priority data as claimed by applicant

Foreign Applications

GERMANY 102 29 460.7 07/01/2002

If Required, Foreign Filing License Granted: 08/06/2003

The number of your priority application, to be used for filing abroad under the Paris Convention is,

US10/459,860

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Voltage follower circuit

Preliminary Class

329

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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PHOENIX, AZ 85014

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OFFICE OF PETITIONS

In re Application of :
Bruce Elliott Covill, et. al. :
Application No. 10/459,890 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. N/A :

This is a decision on the petition under 37 CFR 1.137(b), filed on July 20, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely file a proper reply to the non-final Office action mailed February 1, 2006 and re-mailed on November 14, 2006. A Notice of Abandonment was mailed on July 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 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(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) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks items (1) and (3) above.

As to item (1), the Office action of February 1, 2006 was re-mailed on November 14, 2006. However, to date no response to the Office action has been received. Therefore, petitioner must submit the appropriate reply to the Office action before revival can occur.

As to item (3), the statement of unintentional delay cannot be accepted since the instant petition is signed by one of two inventors. 37 CFR 1.33(b) states:

> 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

(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.

If the instant petition is signed or submitted on behalf of the assignee, the assignee must comply with the requirements of 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment submitted for recording) or by specifying (*e.g.*, reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A blank Statement under 37 CFR 3.73(b) can be found on the USPTO website (PTO/SB/96).

Further, the Change of Correspondence Address filed on September 21, 2006, is not accepted since it is also signed by one of two inventors. Therefore, in order for the Office to accept the Change of Correspondence Address, a new form with the signature of an attorney, assignee, or both inventors must be submitted.

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(b)" and include the missing items noted above. Petitioner is advised that this is **not** a final agency decision.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By Hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By Fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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ADAMS AND REESE LLP
4500 ONE SHELL SQUARE
NEW ORLEANS, LA 70139

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SEP 0 6 2006

OFFICE OF PETITIONS

In re Patent No. 7,064,140 :
Issued: June 20, 2006 :
Application No. 10/459,911 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket Number: 7332-1 :

This is a decision on the petition, filed May 26, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to include the assignee's name on the Fee(s) Transmittal form PTOL-85(b) so that the Letters Patent will issue to the assignee.

The petition is **DISMISSED**.

Assignment data printed on the patent is based solely on the information so supplied on the Issue Fee Transmittal Form (PTOL-85B). Petitioner states that the correct assignee's name is "Louisiana State University Health Sciences Center New Orleans" and that the assignee's name was not included on the Fee(s) Transmittal form PTOL-85(b) on April 11, 2006 at the time of payment of the issue fee. Accordingly, petitioner requested that the patent issue to "Louisiana State University Health Sciences Center New Orleans".

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 not accompanied by 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 at this time.

---

[1] *See* Official Gazette of June 22, 2004

A review of Office database assignment records reflects that an assignment to "Louisiana State University Health Sciences Center New Orleans" has been recorded. Therefore, upon submission of the required certificate of correction and fee, as well a proper petition and fee 37 CFR 3.81, 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 "Louisiana State University Health Sciences Center New Orleans" was the assignee of record at the time of issuance of the application into a patent. *Note also* 35 U.S.C. § 152.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136. The application will be retained in the Office of Petitions for **TWO (2) MONTHS** to await petitioner's reply to this decision.

At the time a proper request with the proper fees complies with the provisions of 37 CFR 3.81(b) and 37 CFR 1.323, it would be appropriate for a certificate of correction to issue.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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ANTHONY P. CURTIS, PH.D.
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Katsumasa Yoshii, et al :
Application No. 10/459,926 :
Filed: June 12, 2003 :
Attorney Docket No. 9281/4595 :

This is a decision on the petition, filed September 22, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 6, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The examiner of Technology Center AU 2871 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 11, 2006

TO SPE OF : ART UNIT 2871

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/459926 Patent No.: 6,912,028

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ **SPE**

2871 **Art Unit**

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ARMSTRONG WORLD INDUSTRIES, INC.
LEGAL DEPARTMENT
P. O. BOX 3001
LANCASTER PA 17604-3001

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OFFICE OF PETITIONS

In re Application of :
Wilson et al. :
Application No. 10/459,977 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket Number: 0211

This is a decision on the petition under 37 CFR 1.137(b), filed February 13, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of July 14, 2005. The non-final Office Action set a three (3) month shortened statutory period for reply. A three month extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on January 15, 2006. A Notice of Abandonment was mailed on February 8, 2006.

This Petition is hereby **Granted**.

The office hereby acknowledges the receipt of the Amendment submitted with the instant petition.

This application is being forwarded to Technology Center 1700 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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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MAY 21 2004

OFFICE OF THE DIRECTOR
TC 3600

Harness, Dickey & Pierce, P.L.C.
P.O. Box 828
Bloomfield Hills, MI 48303

In re Application of
Eric A. Bansbach et al
Serial No: 10/459,984
Filed: June 12, 2003
For: POWER TRANSFER DEVICE WITH HYDRAULIC CLUTCH ACTUATION

: NOTICE OF
: WITHDRAWAL
: FROM ISSUE
: UNDER 37 CFR 1.313(b)
:

The above-identified application is withdrawn from issue after payment of the issue fee due to unpatentability of one or more claims. See 37 CFR 1.313(b)(3).

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 Charles A. Marmor at (703) 308-0830.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Robert Oberleitner, Director
Patent Technology Center 3600
(703) 308-1020

cm/cm 5/20/04

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 8

GARLICK HARRISON & MARKISON LLP
P.O. BOX 160727
AUSTIN TX 78716-0727

COPY MAILED
MAY 0 5 2004
OFFICE OF PETITIONS

In re Application of :
Castaneda, et al. :
Application No. 10/459,985 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. BP2477 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 29, 2004, to revive the above-identified application.

The petition is **dismissed.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

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 August 8, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 9, 2003.

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 pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met

by the filing of a continuing application. In an application, 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(d).

The instant petition does not satisfy requirement (1) above.

$666.00 is due for 37 claims over 20. However, petitioner has only submitted $644.00. An authorization to charge a deposit account has not been submitted and as such, $22.00 remains due. Accordingly, the petition must be dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
2011 South Clark Place
Crystal Plaza Two (left side entrance of building)
Arlington, VA

Telephone inquiries 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 10

GARLICK HARRISON & MARKISON LLP
P.O. BOX 160727
AUSTIN TX 78716-0727

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JUL 0 7 2004

OFFICE OF PETITIONS

In re Application of :
Castaneda, et al. :
Application No. 10/459,985 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. BP2477 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed June 24, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed August 8, 2003. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 9, 2003.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SIEMENS SCHWEIZ
1-44 INTELLECTUAL PROPERTY
ALBISRIEDERSTRASSE 245
ZURICH, CH-8047
SWITZERLAND

AIRMAIL

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NOV 2 6 2004

OFFICE OF PETITIONS

In re Application of :
Christian Reimann :
Application No. 10/459,987 : ON PETITION
Filed: June 13, 2003 :
Attorney Docket No. 2002P08928US :

This is a decision on the petition, filed November 24, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is GRANTED.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 25, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 2834 for processing of the request for continued examination under 37 CFR 1.114.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/21/04

TO SPE OF : ART UNIT 2819

SUBJECT : Request for Certificate of Correction on Patent No.: 6747580

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Lamonte Newsome
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:

B.K. Young 9/30/05

Brian Young
Primary Examiner

Brian Young
Primary Examiner

Brian Young
Primary Examiner

Brian Young
2819

2819

SPE Art Unit

O.I.P.E. JUL 12 2004 JC48 PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: U.S. Patent No. 6,747,580 B1

To: BRIAN K. SCHMIDT

Issued: June 8, 2004

Filed: June 12, 2003

Certificate JUL 15 2004 of Correction

For: **METHOD AND APPARATUS FOR ENCODING OR DECODING DATA IN ACCORDANCE WITH AN NB/(N+1)B BLOCK CODE, AND METHOD FOR DETERMINING SUCH A BLOCK CODE**

Confirmation No.: 4900

Group Art Unit: 2819

Examiner: Brian K. Young

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR PATENT OFFICE MISTAKE UNDER 37 CFR § 1.322

400 Montgomery Street, Suite 1110
San Francisco, CA 94104
(415) 433-2250

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Decision and Certificate of Correction
Branch of the Patent Issue Division

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Attn: Decision and Certificate of Correction Branch of the Patent Issue Division, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 8, 2004.

GIRARD & EQUITZ LLP Date: 07/08/04

By: Marsha A. Townsend

Marsha A. Townsend

Sir:

Attached in duplicate is Form PTO-1050 with at least one copy being suitable for printing.

The exact column and line numbers where the errors occur in the Patent are:

In Column 52, line 52, "Of" should be --of--.

In Column 55, line 59, "Of 2^N (N+)" should be --of 2^N (N+1)--.

In Column 56, line 22, "$f_{p(x)}{}^{C}$" should be --$f_p(x)^C$--.

In Column 58, line 61, "29^9-bit" should be --2^9 9-bit--.

In Column 66, line 37, "$2_9$9-bit" should be --2^9 9-bit--.

In Column 74, line 13, "$2^7$7-bit" should be --2^7 7-bit--.

In Column 76, line 49, "$2^7$7-bit" should be --2^7 7-bit--.

In Column 79, line 18, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 86, line 61, "$2^9$9-bit" should be --2^9 9-bit--.

JUL 19 2004

In Column 94, line 37, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 102, line 13, "$2^9$9-bit" should be --2^9 9-bit--.

The correct text for Column 52, line 52, appears on page 86, line 15, of the of the patent application as filed on June 12, 2003.

The correct text for Column 55, line 59, appears on page 91, line 16, of the of the patent application as filed on June 12, 2003.

The correct text for Column 56, line 22, appears on page 92, line 1, of the of the patent application as filed on June 12, 2003.

The correct text for Column 58, line 61, appears on page 96, line 11, of the of the patent application as filed on June 12, 2003.

The correct text for Column 66, line 37, appears on page 105, line 22, of the of the patent application as filed on June 12, 2003.

The correct text for Column 74, line 13, appears on page 115, line 12, of the of the patent application as filed on June 12, 2003.

The correct text for Column 76, line 49, appears on page 118, line 17, of the of the patent application as filed on June 12, 2003.

The correct text for Column 79, line 18, appears on page 121, line 22, of the of the patent application as filed on June 12, 2003.

The correct text for Column 86, line 61, appears on page 135, line 15, of the of the patent application as filed on June 12, 2003.

The correct text for Column 94, line 37, appears on page 149, line 22, of the of the patent application as filed on June 12, 2003.

The correct text for Column 102, line 13, appears on page 163, line 22, of the of the patent application as filed on June 12, 2003.

Please send the Certificate to:

Alfred A. Equitz
GIRARD & EQUITZ LLP
400 Montgomery Street, Suite 1110
San Francisco, CA 94104

JUL 1 9 2004

Silicon Image, Inc., 1060 E. Arques Avenue, Sunnyvale, CA 94085, is the assignee. The assignment was recorded on June 12, 2003 on Reel 014174; Frame 0576.

The Commissioner is hereby authorized to charge any additional fees, or credit any overpayment to Deposit Account No. 50-1697. **A duplicate copy of this sheet is enclosed.**

Respectfully submitted,

GIRARD & EQUITZ LLP

Dated: 7/7/04 By: Alfred A Equitz

Alfred A. Equitz
Reg. No. 30,922

Attorneys for Applicant(s)

Attorney Docket No. SII-3100 [SIMG0163]

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 6,747,580 B1
DATED: June 8, 2004
INVENTOR: BRIAN K. SCHMIDT

It is certified that eleven errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In Column 52, line 52, "Of" should be --of--.

In Column 55, line 59, "Of 2^N (N+)" should be --of 2^N (N+1)--.

In Column 56, line 22, "$f_{p(x)}{}^{C}$" should be --$f_p(x)^C$--.

In Column 58, line 61, "29^9-bit" should be --2^9 9-bit--.

In Column 66, line 37, "$2_9$9-bit" should be --2^9 9-bit--.

In Column 74, line 13, "$2^7$7-bit" should be --2^7 7-bit--.

In Column 76, line 49, "$2^7$7-bit" should be --2^7 7-bit--.

In Column 79, line 18, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 86, line 61, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 94, line 37, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 102, line 13, "$2^9$9-bit" should be --2^9 9-bit--.

MAILING ADDRESS OF SENDER:

Alfred A. Equitz
GIRARD & EQUITZ LLP
450 Montgomery Street, Suite 1110
San Francisco, CA 94104

PATENT NO. 6,747,580 B1

No. of add'l copies
@ 50¢ per page

⇒ _____

JUL 19 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 6,747,580 B1
DATED: June 8, 2004
INVENTOR: BRIAN K. SCHMIDT

It is certified that eleven errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In Column 52, line 52, "Of" should be --of--.

In Column 55, line 59, "Of 2^N (N+)" should be --of 2^N (N+1)--.

In Column 56, line 22, "$f_{p(x)}{}^{C}$" should be --$f_p(x)^C$--.

In Column 58, line 61, "29^9-bit" should be --2^9 9-bit--.

In Column 66, line 37, "$2_9$9-bit" should be --2^9 9-bit--.

In Column 74, line 13, "$2^7$7-bit" should be --2^7 7-bit--.

In Column 76, line 49, "$2^7$7-bit" should be --2^7 7-bit--.

In Column 79, line 18, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 86, line 61, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 94, line 37, "$2^9$9-bit" should be --2^9 9-bit--.

In Column 102, line 13, "$2^9$9-bit" should be --2^9 9-bit--.

MAILING ADDRESS OF SENDER:

Alfred A. Equitz
GIRARD & EQUITZ LLP
450 Montgomery Street, Suite 1110
San Francisco, CA 94104

PATENT NO. 6,747,580 B1

No. of add'l copies
@ 50¢ per page

⇒_____

JUL 19 2004

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/460007

Paper No.: _____

DATE : 12306

TO SPE OF : ART UNIT 2855

SUBJECT : Request for Certificate of Correction on Patent No.: 6923050
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~~ South Tower 9A22.
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.

Can this be Approved

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:

EDWARD LEFKOWITZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

2855
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

MAIL

JUL 26 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

THE MAXHAM FIRM
750 "B" STREET, SUITE 3100
SAN DIEGO CA 92101

In re Application of:
HUEY, JOHN H., et al.
Application No. 10/460,017
Filed: June 11, 2003
For: **SCREENING CHECKPOINT FOR PASSENGERS AND BAGGAGE**

DECISION ON PETITION
TO MAKE SPECIAL

This is a decision on the Petition To Make Special under MPEP 708.02, XI: Invention for Countering Terrorism, filed May 14, 2004.

A grantable petition to make an application special under 37 C.F.R. § 1.102(d), and in accordance with MPEP 708.02, XI, for an invention which contributes to the countering of terrorism must be accompanied by a statement explaining how the invention contributes to countering terrorism. Examples of the types of technology for countering terrorism are set forth in MPEP 708.02, XI as including, but not limited to, systems for detecting/identifying explosives, aircraft sensors/security systems, and vehicular barricades/disabling systems.

The petition meets the requirements set forth above.

Accordingly, the petition is **GRANTED**.

The application file is being forwarded to the examiner for expedited action in its turn.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

INHOUSE CO.
280 COLORADO AVE.
PALO ALTO CA 94301

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JUL 25 2008

In re Application of
Shrirang Netke, et al.
Application No. 10/460,023
Filed: June 11, 2003
Attorney Docket No. 11957/57

ON PETITION

This is a decision in response to the petition, filed April 2, 2008, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 20, 2007, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 21, 2007. This decision precedes the mailing of a Notice of Abandonment. On April 2, 2008, 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 amendment; (2) the petition fee of $770; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 1618 for appropriate action by the Examiner in the normal course of business on the reply received April 2, 2008.

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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FISH & NEAVE IP GROUP
ROPES & GRAY
1251 AVENUE OF THE AMERICAS FLC3
NEW YORK, NY 10020-1105

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FEB 0 1 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Glenn J. Leedy :
Application No. 10/460,027 :
Filed: June 11, 2003 :
Attorney Docket No. ELM-1 CONT.7 :

This is a decision on the petition, filed January 21, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 25, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 2814 for processing of the request for continued examination under 37 CFR 1.114.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

RECEIVED
CENTRAL FAX CENTER
JUL 15 2009

FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, PC.
The Kennedy Building
321 S. Boston, Suite 800
Tulsa, Oklahoma 74103-3318
TELEPHONE: (918) 599-0621
TELECOPIER: (918) 583-9659

FACSIMILE TRANSMISSION COVER SHEET

DATE: July 15, 2009 AUTO QUOTE: 57253

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 14

FROM: R. Alan Weeks, Esq., Reg. No. 36,050

TO:

ADDRESSEE/ORGANIZATION	FAX NO.	TELEPHONE NO.
Mail Stop Petition	571-273-8300	

MESSAGE: Please see attachments

IF YOU DO NOT RECEIVE ALL OF THE PAGES OR IF ANY ARE ILLEGIBLE, PLEASE CONTACT OUR OFFICE SERVICES DEPARTMENT AT (918) 599-0621 AS SOON AS POSSIBLE.

****

CONFIDENTIALITY NOTICE

This facsimile is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this facsimile is not the intended recipient, you are hereby notified that any disclosure, distribution, or copying of this information is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone, and return it to us at the above address via the United States Postal Service.

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JUL 15 2009

PATENT

Practitioner's Docket No. 57253/03-458

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Nicholas A. Kotov, et al.

Patent Number:	US 7,534,610 B1
Issued:	05/19/2009
Application No.:	10/460,059
Filed:	06/02/2004

Title of Invention: 3D Tissue Constructs on the Basis of Colloidal Crystals Surface Modified by Sequential Layering

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST TO CORRECT NAME OF ASSIGNEE ON ISSUED PATENT

1. Request is hereby made for a Certificate of Correction under 37 CFR 1.323 and in accordance with 37 CFR 3.81(b) to correct/supply the name of an assignee that was erroneously omitted in item 3 of PTOL-85B at the payment of the issue fee.

2. The failure to include all of the assignees was inadvertent.

3. Applicant only included one assignee on PTOL-85B when a second should have also been included. The correct names of the assignees are (1) The Board of Regents for Oklahoma State University and (2) Nomadics, Inc.

4. Proof of the correct name of the assignee, "The Board of Regents for Oklahoma State University" is established by the assignment document submitted for recordation to the Office on October 9, 2003, prior to the issuance of the patent, and recorded at Reel 014573 Frame 0692;

   and

   Proof of the correct name of the assignee, "Nomadics, Inc." is established by the assignment documents submitted for recordation to the Office on November 24, 2003, prior to the issuance of the patent, and recorded at Reel 014715 Frame 0784.

   A copy of the recorded assignment documents are attached.

07/17/2009 JVONG1 00000002 7534610

01 FC:1811 100.00 OP
02 FC:1464 130.00 OP

PAGE 2/14 * RCVD AT 7/15/2009 2:43:21 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/37 * DNIS:2738300 * CSID:9185839659 * DURATION (mm-ss):04-12

RECEIVED
CENTRAL FAX CENTER
JUL 16 2009

5. The processing fee (37 C.F.R. § 1.17(i) - $130.00) and Certificate of Correction fee (37 CFR § 1.20(a) - $100.00) are paid as follows:

Authorization is hereby made to charge the fees to the credit card as shown on the attached credit card information authorization form PTO-2038.

Authorization is also given to charge any additional fees required by this paper or credit any overpayment to deposit account number 060540.

6. Applicant respectfully requests issuance of the Certificate of Correction.

Respectfully Submitted,

Date: 7/15/09

R. Alan Weeks
Registration No. 36,050
Fellers, Snider, Blankenship, Bailey & Tippens, PC
321 S. Boston, Ste. 800
Tulsa, OK 74103
918-599-0621
Customer No. 33900

4864351\1

PAGE 3/14 * RCVD AT 7/15/2009 2:43:21 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/37 * DNIS:2738300 * CSID:9185839659 * DURATION (mm-ss):04-12

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. : 7,534,610 B1
APPLICATION NO. : 10/460,059
ISSUE DATE : 05/19/2009
INVENTOR(S) : Kotov, et al.

It is certified that an error appears in Item 3 of the PTOL-85B and item (73) on the front page in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

–The Board of Regents for Oklahoma State University, Stillwater, OK (US) and Nomadics, Inc., Stillwater, OK (US)–

MAILING ADDRESS OF SENDER(Please do not use customer number below):
Fellers Snider, et al.
321 South Boston, Ste. 800
Tulsa, OK 74103

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 for 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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UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 05, 2004

PTAS

102573189A

FELLERS, SNIDER, BLANKENSHIP, ETAL.
R. ALAN WEEKS
321 S. BOSTON AVE., SUITE 800
TULSA, OK 74103-3318

UNITED STATES PATENT AND TRADEMARK OFFICE
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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 10/09/2003

REEL/FRAME: 014573/0692
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
KOTOV, NICHOLAS A.

DOC DATE: 08/12/2003

ASSIGNEE:
BOARD OF REGENTS FOR OKLAHOMA
STATE UNIVERSITY, THE
STILLWATER, OKLAHOMA

SERIAL NUMBER: 10460059
PATENT NUMBER:

FILING DATE: 06/12/2003
ISSUE DATE:

ANTIONE ROYALL, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

PAGE 6/14 * RCVD AT 7/15/2009 2:43:21 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/37 * DNIS:2738300 * CSID:9185839659 * DURATION (mm-ss):04-12

10/9/03

10-14-2003

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FORM PTO-1595 RECORD

PATENT 102573189

Docket No. 57253/03-458

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of conveying part(ies):

Nicholas A. KOTOV
2114 Celia St.
Stillwater, OK 74074

Additional name(s) & address(es) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies):

Name: THE BOARD OF REGENTS FOR OKLAHOMA STATE UNIVERSITY

Street Address: Stillwater, OK

Additional name(s) & address(es) attached?

☐ Yes ☒ No

3. Nature of Conveyance:

☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other:

Execution Date: 08/12/2003

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:

A. Patent Application No.(s)
10/460,059

B. Patent No.(s).

Additional numbers attached? ☐ Yes ☒ No

2003 OCT -9 AM 7:36
OPR/FINANCE

5. Name and address of party to whom correspondence concerning document should be mailed:

R. Alan Weeks; Reg. No. 36,050
Fellers, Snider, Blankenship, Bailey & Tippens, P.C.
321 S. Boston Ave., Suite 800
Tulsa, OK 74103-3318

6. Total number of applications/patents involved: 1

7. Total fee (37 CFR 3.41) $40.00

☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit Account Number: 06-0540

☒ Any Deficiencies or Credit any Overpayment
☐ Attach duplicate copy of this page if paying by Deposit Account

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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.

R. Alan Weeks
Typed Name

R. Alan Weeks
Signature

10/6/03
Date

Total number of pages including cover sheet, attachments, and document: [3]

223416.1

/10/2003 LHUELLER 00000017 10460059

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JUL 15 2009

ASSIGNMENT

WHEREAS, NICHOLAS A. KOTOV, residing at 2114 Celia St., Stillwater, OK 74074, (hereinafter referred to as "ASSIGNOR") is a co-inventor of a certain new and useful invention entitled "3D TISSUE CONSTRUCTS ON THE BASIS OF COLLOIDAL CRYSTALS SURFACE MODIFIED BY SEQUENTIAL LAYERING", for which a utility application for Letters Patent of the United States was filed on June 12, 2003, as Serial No. 10/460,059, which application claims the benefit of prior filed provisional application Serial No. 60/388,376; and

WHEREAS, THE BOARD OF REGENTS FOR OKLAHOMA STATE UNIVERSITY, an institution of higher education located at Stillwater, Oklahoma, (hereinafter referred to as "ASSIGNEE"), is desirous of acquiring the entire right, title and interest in and to the aforementioned invention and application, and in, to and under any and all Letters Patent of the United States and in any and all foreign countries; and in fact has acquired such rights by virtue of the prior assignment by ASSIGNOR to ASSIGNEE of the subject matter of the above-identified provisional application;

NOW, THEREFORE, this indenture witnesseth that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ASSIGNOR, the inventor, has sold, assigned, transferred and set over and does hereby sell, assign, transfer and set over to ASSIGNEE, the above-referenced invention and application and any and all applications subsequently filed claiming the benefit of said application, divisions, continuations and continuations-in-part thereof, and any and all Letters Patent of the United States, its territorial possessions, and any and all foreign countries which may be granted therefor, and any and all extensions, reissues or certificates of reexamination of such Letters Patent, including all rights of priority and the subject matter of any and all claims which may be obtained in every such patent, the same to be held and enjoyed by ASSIGNEE for its own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives, to the end of the term or terms for which such Letters Patent are or may be granted, extended, reissued or reexamined as fully and entirely as the same would have been held and enjoyed by ASSIGNOR if this assignment had not been made.

AND, ASSIGNOR hereby authorizes and requests the Commissioner of Patents to issue any and all Letters Patent of the United States on the invention, or resulting from an application which claims the benefit of the present application, and from any and all divisions and continuations, extensions, reissues or reexaminations of any such application to ASSIGNEE, and hereby covenants that he has full right to convey the entire interest herein assigned, and that he has not executed and will not execute any agreement in conflict herewith.

AND, ASSIGNOR further hereby covenants and agrees that he will, at any time, upon request and at the expense of ASSIGNEE, execute and deliver any and all papers that may be

necessary or desirable to perfect the title to the invention and application and any Letters Patent as may be granted therefor in ASSIGNEE, its successors, assigns, or other legal representatives, and that if ASSIGNEE, its successors, assigns, or other legal representatives shall desire to file any division or continuation application, or to secure an extension, reissue or reexamination of such Letters Patent, or to file a disclaimer relating thereto, will, upon request, sign all papers, make all rightful oaths, and do all requisite acts for the filing of such division, continuing, or reissue application, request for reexamination or disclaimer, without further compensation.

AND, ASSIGNOR further agrees to communicate to ASSIGNEE, its successors, assigns, or other legal representatives, such facts relating to the invention disclosed in the present application or Letters Patent issuing therefrom as may be known, and to testify as to such facts in any interference or other litigation when requested to do so.

Executed by the undersigned on the date indicated.

Nicholas A. Kotov Aug 12, 2003 Date

211959.1

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUNE 10, 2004

PTAS

102609064A

FELLER, SNIDER, BLANKENSHIP ET.AL.
R. ALAN WEEKS
321 S. BOSTON AVE., SUITE 800
TULSA, OK 74103-3318

UNITED STATES PATENT AND TRADEMARK OFFICE
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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 11/24/2003 REEL/FRAME: 014715/0784
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
DOCKET NUMBER: 5723/03-458

ASSIGNOR:
WANG, SHAOPENG DOC DATE: 10/31/2003

ASSIGNEE:
NOMADICS, INC.
1024 S. INNOVATION WAY
STILLWATER, OKLAHOMA 74074

SERIAL NUMBER: 10460059 FILING DATE: 06/12/2003
PATENT NUMBER: ISSUE DATE:
TITLE: 3D TISSUE CONSTRUCTS ON THE BASIS OF COLLOIDAL CRYSTALS SURFACE MODIFIED BY SEQUENTIAL LAYERING

014715/0784 PAGE 2

JEFFREY OLSEN, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

11/24/03

11-25-2003

FORM PTO-1595 I SHEET

Docket No. 57253/03-458

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of conveying party(ies):

Shaopeng WANG
1112 North Knoblock St., Apt. 32
Stillwater, OK 74075

Additional name(s) & address(es) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies):

Name: NOMADICS, INC.

Street Address: 1024 S. Innovation Way
Stillwater, OK 74074

Additional name(s) & address(es) attached?

☐ Yes ☒ No

3. Nature of Conveyance:

☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other:

Execution Date: 10/31/2003

2003 NOV 24 PM 1:35
FINANCE SECTION
OFFICE OF PATENTS AND TRADEMARKS

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:

A. Patent Application No.(s)
10/460,059

B. Patent No.(s).

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

R. Alan Weeks; Reg. No. 36,050
Fellers, Snider, Blankenship, Bailey & Tippens, P.C.
321 S. Boston Ave., Suite 800
Tulsa, OK 74103-3318

6. Total number of applications/patents involved: 1

7. Total fee (37 CFR 3.41) $40.00

☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit Account Number: 06-0540

☐ Any Deficiencies or Credit any Overpayment
☒ Attach duplicate copy of this page if paying by Deposit Account.

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11/25/2003 LHUELLER 00000050 060540 10460059
01 FC:8021 40.00 DA

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.

R. Alan Weeks
Typed Name

Signature

11/19/03
Date

Total number of pages including cover sheet, attachments, and document: [3]

234444.1

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ASSIGNMENT

WHEREAS, SHAOPENG WANG, residing at 1112 North Knoblock St., Apt. 32, Stillwater, OK 74075, (hereinafter referred to as "ASSIGNOR") is a co-inventor of a certain new and useful invention entitled "3D TISSUE CONSTRUCTS ON THE BASIS OF COLLOIDAL CRYSTALS SURFACE MODIFIED BY SEQUENTIAL LAYERING" for which a utility application for Letters Patent of the United States was filed on June 12, 2003, as Serial No. 10/460,059, which application claims the benefit of prior filed provisional application Serial No. 60/388,376; and

WHEREAS, NOMADICS, INC., an Oklahoma corporation, having a principal place of business at 1024 S. Innovation Way, Stillwater, OK 74074, (hereinafter referred to as "ASSIGNEE"), is desirous of acquiring the entire right, title and interest of ASSIGNOR in and to the aforementioned invention and application, and in, to and under any and all Letters Patent of the United States and in any and all foreign countries;

NOW, THEREFORE, this indenture witnesseth that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ASSIGNOR, the inventor, has sold, assigned, transferred and set over and does hereby sell, assign, transfer and set over to ASSIGNEE, the above-referenced invention and application and any and all applications subsequently filed claiming the benefit of said application, divisions, continuations and continuations-in-part thereof, and any and all Letters Patent of the United States, its territorial possessions, and any and all foreign countries which may be granted therefor, and any and all extensions, reissues or certificates of reexamination of such Letters Patent, including all rights of priority and the subject matter of any and all claims which may be obtained in every such patent, the same to be held and enjoyed by ASSIGNEE for its own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives, to the end of the term or terms for which such Letters Patent are or may be granted, extended, reissued or reexamined as fully and entirely as the same would have been held and enjoyed by ASSIGNOR if this assignment had not been made.

AND, ASSIGNOR hereby authorizes and requests the Commissioner of Patents to issue any and all Letters Patent of the United States on the invention, or resulting from an application which claims the benefit of the present application, and from any and all divisions and continuations, extensions, reissues or reexaminations of any such application to ASSIGNEE, and hereby covenants that he has full right to convey the entire interest herein assigned, and that he has not executed and will not execute any agreement in conflict herewith.

AND, ASSIGNOR further hereby covenants and agrees that he will, at any time, upon request and at the expense of ASSIGNEE, execute and deliver any and all papers that may be necessary or desirable to perfect the title to the invention and application and any Letters Patent as

may be granted therefor in ASSIGNEE, its successors, assigns, or other legal representatives, and that if ASSIGNEE, its successors, assigns, or other legal representatives shall desire to file any division or continuation application, or to secure an extension, reissue or reexamination of such Letters Patent, or to file a disclaimer relating thereto, will, upon request, sign all papers, make all rightful oaths, and do all requisite acts for the filing of such division, continuing, or reissue application, request for reexamination or disclaimer, without further compensation.

AND, ASSIGNOR further agrees to communicate to ASSIGNEE, its successors, assigns, or other legal representatives, such facts relating to the invention disclosed in the present application or Letters Patent issuing therefrom as may be known, and to testify as to such facts in any interference or other litigation when requested to do so.

Executed by the undersigned on the date indicated.

Shaopeng Wang 10/31/03
Date

211954.1

UNITED STATES PATENT AND TRADEMARK OFFICE 10692V-000340US JS

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

OIPE JC12
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TOWNSEND & TOWNSEND
AND CREW LLP

Paper No. 10 FEB 21 2003

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
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OFFICE OF PETITIONS
ON PETITION

In re Application of :
Michael A. Adams ET AL. (As Amended) :
Application No. 10/095,654 :
Filed: March 6, 2002 :
Attorney Docket No. 10692V-000340US :

This is a decision on the petition under 37 CFR 1.182, filed November 6, 2002, 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.Michael A. Adams

2. Jeremy P. W. Heaton

3. James D. Banting

A corrected filing receipt is enclosed with this decision.

This application is being forwarded to TC 1600 for further processing.

Telephone inquiries concerning this decision should be directed Gregory J. Toatley, Jr. at (703) 305-4066 or to the undersigned at (703) 306-3475.

Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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HAMMER & HANF, PC
3125 SPRINGBANK LANE
SUITE G
CHARLOTTE NC 28226

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OFFICE OF PETITIONS

In re Application of	:	
Shelton et al.	:	
Application No. 10/460,064	:	DECISION ON PETITION
Filed: June 13, 2003	:	
Attorney Docket No. 2009.5	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 24, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application, (2) the petition fee, and (3) a 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 continuing application No. 12/150,235.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER – BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

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MAY 1 2 2005

OFFICE OF PETITIONS

In re Application of :
Roger Clive Hammond et al :
Application No. 10/460,068 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. CM2486MC

This is a decision on the petition, filed April 19, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on April 6, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1615 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

CUMMINS-ALLISON CORP.
C/O NIXON PEABODY LLP
300 S. Riverside Plaza
16th Floor
CHICAGO, IL 60606

Mail Date: 04/21/2010

Applicant	: Curtis W. Hallowell	: DECISION ON REQUEST FOR
Patent Number	: 7600626	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/460,071	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1214** 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

JAN 29 2004

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JAN 29 2004

OFFICE OF THE DIRECTOR
TC 3600

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

PATTON BOGGS
PO BOX 270930
LOUISVILLE, CO 80027

Paper No. 3

In re application of
Loy Eubanks
Application No. 10/460,073
Filed: December 16, 2002
For: GARDEN TOOL FOR GRUBBING

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on June 12, 2003, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age

The petition is **DISMISSED**.

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 was a statement from applicant's attorney. This is not acceptable. Any such statement must be signed by the person alleging an age of 65 or older.

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: 1/20/04

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MAR 26 2004

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MAR 26 2004

OFFICE OF THE DIRECTOR
TC 3600

PATTON BOGGS
1660 LINCOLN ST
SUITE 2050
DENVER CO 80264

In re application of
Loy Eubanks
Application No. 10/460,073
Filed: June 12, 2003
For: GARDEN TOOL FOR GRUBBING

: **DECISION ON PETITION**
: **TO MAKE SPECIAL**
: **(APPLICANT'S AGE)**
:

This is a decision on the renewed petition submitted on March 8, 2004 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the renewed petition is a statement of facts signed by Mr. Eubanks indicating that he is at least 65 years of age.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the

application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/mjz: 3/19/04

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

PATTON BOGGS LLP
1801 CALFORNIA STREET
SUITE 4900
DENVER, CO 80202

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APR 25 2008

OFFICE OF PETITIONS

In re Application of :

EUBANKS, Loy :
Application No. 10/460,073 : DECISION ON PETITION
Filed: June 12, 2003 : TO WITHDRAW
Attorney Docket No. **970834.101** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed 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 G. Peter 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.

All future correspondence will be directed to the first named inventor Loy Eubanks at the address indicated below.

There is an outstanding Office action mailed November 02, 2007 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **LOY EUBANKS**
1120 SLEEPYHOLLOW DRIVE
MELBOURNE, FL 32901

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MEMPHIS, TN 38120-4367

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MAR 3 1 2004

OFFICE OF PETITIONS

In re Application of :
Spirin and Dubinin :
Application No. 10/460,078 : DECISION REFUSING STATUS
Effective Date: June 12, 2003 : UNDER 37 CFR 1.47(b)
For: REINFORCED MATERIAL :

This is in response to the petition under 37 CFR 1.47(b), filed June 12, 2003 and supplemented on February 23, 2004.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

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 items (1) and (2) set forth above.

As to item (1), petitioner has failed to adequately show or provide proof that the nonsigning inventors refuse to join in the application after having been presented with the application papers (specification, claims, and drawings). There is no indication whether the nonsigning inventors were presented with a copy of the complete application papers. If the nonsigning inventors were not presented with a copy of the application papers, then they could not attest that they have "reviewed and understands the application papers" and therefore could not sign the declaration which they were given. Did the nonsigning inventors receive the application papers? See MPEP 409.03(d). Unless petitioner can show that a copy of the application papers was presented to the nonsigning inventors, then petitioner will have to mail a copy of the complete application papers to the nonsigning inventors at their last known address, return receipts requested. A cover letter of instructions should accompany the mailing of the application papers setting a deadline or a

statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as certified mail return receipt, cover letter of instructions, telegrams, E-mail, etc., to support a showing that the nonsigning inventors have refused to sign the declaration after having been presented with the application papers. See MPEP 409.03(d).

It is unclear from the declaration of Dr. Ivanov, Chief Executive Officer of Intellikraft Limited, whether the nonsigning inventors were unable to be located to execute the declaration. More specifically, the declaration of Dr. Ivanov states: Intellikraft Limited has been unable to contact Yuri Spirin and Vladimir Dubinin to secure cooperation in executing...."

Where inability to find or locate a named inventors is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventors. The statement(s) of fact must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search should be made of the telephone directories and any regional or national registry(s). Copies of the results of the search must be referred to in any renewed petition. See MPEP 409.03(d). If inventors are located, then a complete copy of the application papers (specification, claims, drawings, oath, etc.) should be mailed to the inventors addresses, return receipt requested, along with a cover letter of instructions which includes 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. If the papers are returned and all other attempts to locate or reach the inventor, e.g., through E-mail, telegrams, etc., continue to fail, then applicant will have established that inventors cannot be reached or have refused to join in the application.

If the inventors are located and the inventors orally refuse to join in the application or where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to item (2), a signed declaration in compliance with 37 CFR 1.63 and 1.64 must be made by the 37 CFR 1.47(b) applicant. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary or Treasurer) may sign the oath or declaration. Where an

oath or declaration is being signed on behalf of an assignee, note MPEP Section 324.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Crystal Plaza Two, Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202

By fax: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to Wan Laymon at (703) 306-5685.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MAY 07 2004

OFFICE OF PETITIONS

In re Application of :
Yury L. Spirin et al : DECISION ACCORDING STATUS
Application No. 10/460,078 : UNDER 37 CFR 1.47(b)
Effective Date: June 12, 2003 :
For: REINFORCED MATERIAL

This is a decision on the renewed petition under 37 CFR 1.47(b), filed April 12, 2004, requesting reconsideration of the decision mailed March 31, 2004.

The petition is granted.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

Petitioner has demonstrated that the non-signing inventors refuse to sign the application. Specifically, petitioner established that the nonsigning inventors refuse to sign the declaration after being sent a copy of the above-identified application and declaration.

As provided in Rule 1.47(b), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Inquiries related to this decision may be addressed to Wan Laymon at (703) 306-5685.

This application file is being referred to the Office of Initial Patent Examination for preexamination processing.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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YURI LEONIDOVICH SPIRIN
13 SOUTH AVENUE KIDLINGTON
OXFORDSHIRE OX5 1BG
UNITED KINGDOM AIRMAIL

COPY MAILED
MAY 07 2004
OFFICE OF PETITIONS

In re Application of
Spirin and Dubinin
Application No. 10/460,078
Effective Date: June 12, 2003
For: REINFORCED MATERIAL

Dear Mr. Spirin:

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)306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: WYATT TARRANT & COMBS
1715 AARON BRENNER DRIVE
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MEMPHIS, TN 38120-4367

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VLADIMIR STEPANOVICH DUBININ
U1. USACHEVA, D.21, KV. 69
119048 MOSCOW, RUSSIA **AIRMAIL**

COPY MAILED
MAY 07 2004
OFFICE OF PETITIONS

In re Application of
Spirin and Dubinin
Application No. 10/460,078
Effective Date: June 12, 2003
For: REINFORCED MATERIAL

Dear Mr. Dubinin:

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)306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: WYATT TARRANT & COMBS
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OFFICE OF PETITIONS

In re Application of :
Emad Zawaideh :
Application No. 10/460,089 : ON PETITION
Filed: June 12, 2003 :
Attorney Docket No. SCI-2 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 11, 2008, to revive the above-identified application.

The application became abandoned for failure to respond to the non-final Office action mailed February 9, 2007. A Notice of Abandonment was mailed on September 28, 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 $770; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2877for review of the amendment filed with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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Paper No.

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SAN FRANCISCO CA 94104

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MAY 17 2007

OFFICE OF PETITIONS

In re Application of	:	
Raillard et al.	:	DECISION ON APPLICATION
Application No. 10/460,091	:	FOR
Filed: June 11, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 34523/US/3AMP /SKS	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT" filed February 20, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b)(3)(B)(i) be corrected from five hundred thirty-three (533) days to five hundred thirty-seven (537) days.

The application for patent term adjustment is **DISMISSED**.

On November 17, 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 533 days. On February 20, 2007, applicants timely[1] submitted an application for patent term adjustment (with required fee). Applicants dispute the period of reduction of 4 days associated with the response received August 22, 2006. Applicants point to the Certificate of Mailing dated August 18, 2006 on the response. Applicants argue that given the date of the certificate of mailing no reduction should have been entered.

[1] PALM records indicate that the Issue Fee payment was also received on February 20, 2007.

The record supports a conclusion that the application is not subject to a terminal disclaimer.

Applicants are incorrect. 37 CFR § 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

The issue in determining whether an applicant has failed to engage in reasonable efforts to conclude prosecution within the meaning of §1.704(b) is whether applicant has caused their response to be received in the Office within 3 months of the mailing date of the Office communication. The issue is not timeliness. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period. 37 CFR 1.7 is relevant for determining timeliness and is not relevant to a determination of whether applicant has failed to engage in reasonable efforts to conclude prosecution or examination. By definition, filing a paper outside of the three-month period is a failure to engage.

As stated in MPEP 2731, applicants may wish to consider the use of the "Express Mail Post Office to Addressee " service of the United States Postal Service (37 CFR 1.10) or facsimile transmission (37 CFR 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. Alternatively, applicants may choose to mail

correspondence with sufficient time to ensure that the correspondence is received in the Office (and stamped with a date of receipt) before the expiration of the three-month period.

Accordingly, pursuant to § 1.704(b), the period of adjustment was properly reduced by 4 days, the number of days, beginning on August 19, 2006, the day after the date that is three months after the date of mailing of the Office action, and ending on August 22, 2006, the date of filing of the reply.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is five hundred thirty-three (533) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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DENVER CO 80202-5647

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OFFICE OF PETITIONS

In re Patent No. 7,232,924 :
Issue Date: June 19, 2007 :
Application No. 10/460,091 : NOTICE
Filed: June 11, 2003 :
Attorney Docket No. 34523/US/3AMP/SKS :

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.

While the petition is not signed by an attorney of record in this patent, the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that Todd A. Lorenz is authorized to represent the particular party on whose behalf he acts, in accordance with 37 CFR 1.34(a).

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.

Alicia Kelley
Petitions Examiner
Office of Petitions