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OFFICE OF PETITIONS

In re Application of	:	
Daniel B. Dow	:	
Application No. 10/849,352	:	DECISION ON REQUESTS
Filed: May 18, 2004	:	TO WITHDRAW
Attorney Docket No. MIC/99-0003.C	:	FROM RECORD
	:	

This is a decision on the request to withdraw as attorney or agent under 37 C.F.R. § 1.36(b), filed February 13, 2007.

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

A review of the file record indicates that the power of attorney to David M. Ganz and all attorneys of record has been revoked by the assignee of the patent application on February 27, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) are moot.

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

There are no outstanding office actions.

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

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Michael G. Fletcher
Fletcher Yoder, PC
7915 FM 1960 West, Suite 330
Houston, TX 77070

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/849,352	05/18/2004	Daniel B. Dow	MIC/99-0003.C

CONFIRMATION NO. 6298

OC000000023978811

22874
GANZ LAW, P.C.
P O BOX 2200
HILLSBORO, OR 97123

Date Mailed: 05/21/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/27/2007.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71.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).

Kimberly Gabriel

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

FORMER ATTORNEY/AGENT COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/03/09

TO SPE OF : ART UNIT 2612

SUBJECT : Request for Certificate of Correction for Appl. No.: 10849366 Patent No.: 7449990 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: All changes have been approved.

/Benjamin C. Lee/ SPE 2612
3/18/09
SPE **Art Unit**

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JUL 2 8 2004

DCM

In re Application of	:	
John D. Hottovy, et al.	:	
Serial Number: 10/849,393	:	PETITION UNDER
Filed: May 19, 2004	:	MPEP 708.02 VIII
For: METHOD AND APPARATUS FOR HIGH SOLIDS SLURRY POLYMERIZATION	:	

This is in response to the petition filed May 19, 2004, requesting that the above-identified application be granted Special Status under section 708.01 VIII of the MPEP and 37 CFR 1.102.

A petition to make an application special may be filed without a fee only in those cases enumerated in 37 CFR 1.102 (c). All other petitions to make an application special must be accompanied by the fee set forth in 37 CFR 1.17(h). See 37 CFR 1.102 (d). The fee set forth in 37 CFR 1.17(h) has not been paid.

The application remains in the status of a new application awaiting action in its regular turn. Applicant is given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Technology Center (TC) Special Program Examiner.

Accordingly the petition is **DENIED.**

Marian C. Knode

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

Michael G. Fletcher
FLETCHER YODER
P.O. Box 692289
Houston TX 77269-2289

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WK

Mailed: 8/11/05

In re application of	:	
Hottovy et al.	:	DECISION ON
Serial No. 10/849,393	:	PETITION
Filed: May 19, 2004	:	
For: HIGH SOLIDS SLURRY POLYMERIZATION	:	

This is a decision on PETITION TO EXPUNGE UNDER 37 C.F.R. 1.59(b), filed August 24, 2004, which has been accepted as a timely petition under 1.59(b) and MPEP 724.02 and is before the Group Director of Technology Center for consideration.

DECISION

Petitioner requests that the proprietary information be expunged and that the documents are appropriately disposed of in accordance with 37 CFR 1.59. Each of the criteria for granting the request has been satisfied, see the MPEP 724.05.

The petition is **GRANTED.**

Section 1.59 has been amended to eliminate references to returning documents that have been expunged to recognize that, with electronic Official files, there will be nothing to return when a paper is expunged.

The Office is capturing electronic images of all documents that form the Official file. Where the image is generated from a physical source document, the originating document may be disposed of once the electronic image accuracy is verified. The paper source document will eventually be destroyed under a United States National Archives and Records Administration (NARA) approved schedule. Therefore, if a document is to be expunged from the record, the only operation that will be required will be removal of the image from the Official file.

Paragraph (a)(1) of §1.59 has been amended by deleting the phrase "and returned " from the first sentence, and deleting the second sentence. Paragraph (b) of §1.59 has been amended by deleting the phrase "and return " from each of the first and second sentences. The Office will continue to provide notice in the Official file that a paper has been expunged and the Office will send a decision to the applicant notifying the applicant that the paper has been expunged.

10/849,393

The image of the document will be removed from the Official file.

Jacqueline M. Stone

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

John M, Rariden
Fletcher Yoder
P.O. Box 692289
Houston, TX 77269-2289

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SPEAR TOWER, SUITE 2000
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JUL 28 2005

OFFICE OF PETITIONS

In re Application of	:
Paul Lubbock	: DECISION ON REQUEST TO DENY
Application No. 10/849,410	: THIRD PARTY REQUEST TO
Filed: May 19, 2004	: WITHDRAW FROM ISSUE
Attorney Docket No. R0367-03101	:

This is in reply to the communication entitled "Request to Deny Third Party Request to Withdraw Present Application from Issue," filed July 20, 2005.

The request is **dismissed** as premature.

The petition requests that "the request by the applicant in application Serial No. 10/683,885 *** to withdraw the present application from issue for the purposes of initiating an interference be denied."

As the record fails to disclose the presence of a petition to withdraw from issue having been filed in this application, the petition is dismissed as premature. However, should a petition to withdraw from issue be filed in this case by a third party, petitioner is advised that a third party has no right to intervene in the prosecution of a particular patent application to prevent its issuance and would, therefore, lack any standing to herein request any intervention that would prevent the due course issuance of this application, including withdrawal from issue for consideration of, *inter alia*, a possible interference. Nevertheless, the USPTO has the right and, indeed, the obligation, to withdraw a given application from issue under the appropriate circumstances. *See* Harley v. Lehman, 981 F.Supp. 9, 11-12, 44 USPQ2d 1699, 1701-1702 (C.D.C. 1997); Blacklight Power, Inc. V. Dickinson, 2000 U.S. Dist LEXIS 11754, 55 USPQ2d 1812 (D.D.C. 2000); aff'd sub nom Blacklight Power, Inc. v. Rogan, 63 USPQ2d 1534 (CA FC 2002).

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

This matter is being referred to Publishing Division.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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PAUL J. ESATTO, JR.
SCULLY, SCOTT, MURPHY & PRESSER
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

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FEB 1 5 2008

OFFICE OF PETITIONS

In re Patent No. 7,265,500	:	
Application No. 10/849,433	:	
Filed: May 19, 2004	:	ON PETITION
Issued: September 4, 2007	:	
Attorney Docket No. 17781	:	

This is a decision on the petition filed January 10, 2008, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name and address of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

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

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3206. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Liana Walsh
Petitions Examiner
Office of Petitions

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

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MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA VA 22182-3817

JUL 0 3 2008

In re Application of: TACHIHARA et al.
Appl. No.: 10/849,440
Filed: May 20, 2004
For: NAILER

: DECISION ON PETITION

This is a decision on the petition filed on June 4, 2008 by which petitioners request the USPTO consider the Information Disclosure Statement (IDS) filed April 10, 2008. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed as moot.

Review of the application shows an Office action was issued by the examiner on June 12, 2008 which included a supplemental Notice of Allowability and an indication the April 10, 2008 IDS has been considered by the examiner. Note the time for payment of the issue fee remains running as set in the Notice of Allowance and Fee(s) Due mailed May 28, 2008 and is not reset by the mailing of the supplemental Notice of Allowability. As relief has been provided by the examiner, the petition appears moot.

PETITION DISMISSED

Any questions concerning this decision should be directed to Special Programs Examiner J. Harrison at 571-272-449.

Karen M. Young

Karen M. Young, Director
Technology Center 3700

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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FEB 23 2005

In re Application of	:	ap
Christian Thoma	:	DECISION
Serial No. 10/849,464	:	ON
Filed: May 20, 2004	:	PETITION
For: APPARATUS AND METHOD FOR	:	UNDER 708.02,VIII
MIXING DISSIMILAR FLUIDS	:	

This is in response to the petition filed May 20, 2004, requesting that the above-identified application be granted Special Status. The petition has been considered under Section 708.02 (VIII) of the MPEP and 37 CFR 1.102(c) (fee paid).

The petition has been found to be deficient for the following reason: Section 708.02, VIII(C) requires that a pre-examination search be made; this search should cover all areas searchable by the examiner. However, our review shows that Class 366, Subclasses 169.1, 169.2, 172.1, 173.1, 181.7, 279, 315, and 316 should have been searched.

Accordingly, the petition is **DENIED.**

Richard Crispino, Special Program Examiner
Technology Center 1700
Chemical and Materials Engineering

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MARTINE PENILLA & GENCARELLA, LLP
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SUITE 200
SUNNYVALE CA 94085

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OFFICE OF PETITIONS

In re Application of

Daynes, et al.

Application No. 10/849,468

Filed: May 18, 2004

Attorney Docket No. SUNMP338A

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed January 2, 2008.

The petition is **granted**.

This application was held abandoned July 17, 2008, after no reply was received to the non-final Office action mailed April 16, 2008. The notice set a shortened statutory period for reply of three month from its mailing date. No response was received within the allowable period and the application became abandoned on July 17, 2008. A Notice of Abandonment was mailed December 9, 2008. The instant petition was filed on January 2, 2008. Petitioner maintains that the notice of April 16, 2008, was never received and provides a copy of the relevant docketing calendar as proof of the same.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

It is noted that petitioner states that attorney Michael Hsu has not worked for petitioner in over three years. A review of the application file information for this application reveals that Mr. Hsu is still listed as an attorney to whom power of attorney is granted in this application. Petitioner is responsible for timely informing the USPTO of material changes to the attorney to whom power of attorney is granted in an application. If appropriate, petitioner should take immediate steps to revoke the power of attorney accorded Mr. Hsu in this application.

The application file is being forwarded to Technology Center 2100, GAU 2191 for further processing that will include re-mailing the non-final Office action and resetting of the period for reply.

Questions 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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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

MAILED
DEC 14 2005
Technology Center 2100

In re Application of: YAGI, et al.
Application No. 10/849,482
Filed: May 20, 2004
For: STORAGE MANAGEMENT METHOD AND STORAGE MANAGEMENT SYSTEM

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 26 October 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

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

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

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

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

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

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

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

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

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

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

ds

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FALLS CHURCH VA 22040-0747

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OFFICE OF PETITIONS

In re Patent No. 7186191	:	
Issue Date: 03/06/2007	:	
Application No. 10/849513	:	NOTICE
Filed: 05/20/2004	:	
Attorney Docket No. 206,544	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on 17 May, 2007.

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) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Van Antwerpen et al.	:	
Application No. 10/849,534	:	ON PETITION
Filed: May 18, 2004	:	
Attorney Docket No. 015114-072900US	:	

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

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 2800 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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BACON & THOMAS
625 SLATERS LANE, FOURTH FLOOR
ALEXANDRIA VA 22314-1176

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MAR 16 2007

OFFICE OF PETITIONS

In re Application of	:	
Toshiaki Niwa et al	:	
Application No. 10/849,550	:	ON PETITION
Filed: May 20, 2004	:	
Attorney Docket No. None	:	

This is a decision on the petition, filed March 15, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on February 22, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 3661 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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ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
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WASHINGTON DC 20036

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OFFICE OF PETITIONS

In re Application of
Francesca Benedini, Ennio Ongini, and Piero Del Soldato
Application No. 10/849,561
Filed: May 20, 2004
Attorney Docket No. 026220-00044
Title: STATIN DERIVATIVES

DECISION ON PETITION

This is in response to the petition under 37 C.F.R. §1.47(a)[1], filed August 18, 2004.

On May 20, 2004, the application was filed, identifying Francesca Benedini, Ennio Ongini, and Piero Del Soldato as joint inventors. The application was deposited without an oath or declaration. On July 21, 2004, a "Notice to File Missing Parts of Nonprovisional Application – Filing Date Granted" (Notice) was mailed, indicating that a fully executed oath or declaration, a surcharge, the basic filing fee, and additional claim fees were required. This Notice set a two-month period for reply.

[1]A grantable petition under 37 C.F.R. §1.47(a) requires:

(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
(3) a statement of the last known address of the non-signing inventors;
(4) either
  a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
  b) proof that the non-signing inventor cannot be found or reached after diligent effort;
(5) a declaration which complies with 37 CFR §1.63.

Along with the instant petition, Petitioner has submitted a declaration which has been executed by the first two joint inventors, the petition fee, the surcharge, the basic filing fee, fees for excess claims, a statement of facts, and copies of several letters. The letters appear to be in Italian, and no translation has been provided. As the contents of these letters cannot be determined by the undersigned, their contents have not been considered.

The petition has met requirements (1) – (2) and (5) above.

Regarding the third requirement, petitioner has failed to include a statement of the last known address of the non-signing inventor[2].

Regarding the fourth requirement above, it does not appear that a complete copy of the application was sent to the non-signing inventor. Only the "authorization for EPC and PCT, USA assignment, [and] USA declaration" were sent to the non-signing inventor and his legal representative. No mention is made of the inclusion of the specification, claims, or drawings. As such, it is clear that they were not included.

Where a refusal of the inventor to sign the application papers is alleged, the Office requires the petitioner to establish that a bona fide attempt was made to mail a complete copy of the application, which entails the specification, claims, drawings, and oath or declaration.[3] As only the declaration has been sent, the fourth requirement has not been met. It follows that since it has not been shown by one having firsthand knowledge that a complete copy of the application was sent to the inventor, one cannot refuse to sign something which one has not seen. A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed[4].

Petitioner may wish to consider sending a complete copy of the application to the non-signing inventor at his last known address, and having a person having first-hand knowledge of this mailing aver to the same.

For these reasons, the petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include either a declaration which has been executed by Mr. Del Soldato or proof that a complete copy of the application was provided to him, along with a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.47(a)". This is not a final agency action within the meaning of 5 U.S.C 704.

---

2 See MPEP 409.03(e).
3 See MPEP 409.03(d).
4 In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski.

Any renewed petition may be submitted by mail[5], hand-delivery[6], or facsimile[7].

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

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

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

6 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

7 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

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MAY 13 2005

OFFICE OF PETITIONS

In re Application of
Benedini, Ongini, and Del Soldato
Application No.: 10/849,561
Filed: May 20, 2004
Attorney Docket No: 026220-000444
For: STAIN DERIVATIVES

: DECISION ACCORDING
: RULE 47(a) STATUS

This is in response to the petition under 37 CFR 1.47(a), filed August 18, 2004.

The petition is **GRANTED**.

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

The above-cited application was filed on May 20, 2004, without a properly executed declaration. On July 21, 2004, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application requiring a properly executed oath or declaration, surcharge for the late filing of the same, and the payment of the filing and claim fees. On August 18, 2004, the instant petition was filed with evidentiary documents and statements.

Petitioner has shown that inventor Del Soldato has refused to join the prosecution of the above-identified application after having been presented with the application papers. The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

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

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

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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NIXON PEABODY, LLP
300 S. RIVERSIDE PLAZA
16TH FLOOR
CHICAGO, IL 60606

MAILED

NOV 23 2009

OFFICE OF PETITIONS

In re Application of	:	
Weidong Zhu, et al.	:	
Application No. 10/849,571	:	DECISION ON PETITION
Filed: May 20, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 266923-000007USPT	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed September 25, 2009 and resubmitted September 29, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to a prior-filed provisional application.

The petition is **DISMISSED.**

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

This pending nonprovisional application was filed on May 20, 2004, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/471,813, which was filed on May 20, 2003, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. 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).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a renewed petition under 37 CFR 1.78(a)(6) and either an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)) deleting the incorporation by reference statement, are required.

As authorized, the $1410 fee required by 37 CFR 1.78(a)(6)(ii) will be charged to petitioner's Deposit Account No. 50-4181.

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. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/dab/
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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NIXON PEABODY, LLP
300 S. RIVERSIDE PLAZA
16TH FLOOR
CHICAGO, IL 60606

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MAR 04 2010

In re Application of Weidong Zhu, et al. Application No. 10/849,571 Filed: May 20, 2004 Attorney Docket No. 266923-000007USPT	: : : : :	DECISION ON PETITION UNDER 37 CFR 1.78(a)(6)

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed December 10, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

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

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

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

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 April M. Wise at (571) 272-1642. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 2863 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/849,571	05/20/2004	2863	1058	266923-000007USPT	46	9

CONFIRMATION NO. 6579

CORRECTED FILING RECEIPT

70001
NIXON PEABODY, LLP
300 S. Riverside Plaza
16th Floor
CHICAGO, IL 60606

OC000000040291028

Date Mailed: 02/25/2010

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)

Weidong Zhu, Elkridge, MD;
Guangyao Xu, Baltimore, MD;
Nengan Zheng, Baltimore, MD;
Benjamin Haynes Emory, Baltimore, MD;
Chun Nam Wong, Lubbock, TX;

Power of Attorney: The patent practitioners associated with Customer Number 70001

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/471,813 05/20/2003
and claims benefit of 60/512,656 10/20/2003 *
(*)Data provided by applicant is not consistent with PTO records.

Foreign Applications

If Required, Foreign Filing License Granted: 07/20/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/849,571**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

System and method for detecting structural damage

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 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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APPLIED MEDICAL RESOUCES CORPORATION
22872 AVENIDA EMPRESA
RANCHO SANTA MARGARITA, CA 92688

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OFFICE OF PETITIONS

In re Application of :
Edward Almond et al :
Application No. 10/849,574 : DECISION ON PETITION
Filed: May 18, 2004 : TO WITHDRAW
Attorney Docket No. UDL1P063C1 : 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 9, 2004.

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 37 CFR 10.40 states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" Additionally, 37 CFR 10.40 states, "i[f] paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because: [. . .]" Reasons a practitioner can permissively withdraw follow the later quotation.

Since the request for withdrawal as attorney or agent submitted on September 9, 2004 provides no reasons for withdrawal, 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 for Withdrawal 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 Irvin Dingle at 571-272-3210.

Denise Pothier
Petitions Examiner
Office of Petitions

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
170 WOOD AVENUE SOUTH
ISELIN NJ 08830

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JUN 28 2007

OFFICE OF PETITIONS

In re Application of	:	
Kiraly et al.	:	
Application No. 10/849,576	:	DECISION ON PETITION
Filed: May 19, 2004	:	
Attorney Docket No. 2003P10074 US01	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 14, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, November 16, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 17, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1500.00; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571)272-6052 or in his absence, the undersigned at (571) 272-7099.

This application is being referred to Technology Center AU 2882 for appropriate action by the Examiner in the normal course of business on the reply received September 14, 2006.

David Bucci
Petitions Examiner
Office of Petitions

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CORPORATE INTELLECTUAL PROPERTY - UW2220
P O BOX 1539
KING OF PRUSSIA, PA 19406-0939

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JAN 17 2007

OFFICE OF PETITIONS

In re Application of	:	
Michael John Sasse et al	:	
Application No. 10/849,591	:	DECISION GRANTING PETITION
Filed: May 20, 2004	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. P31939C3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 23, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned by operation of law for failure to reply in a timely manner to the non-final Office action mailed April 18, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 19, 2006.

The rule at 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language of the rule, the statement 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 appearing in the petition.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply, (2) the $1,500 petition fee, and (3) an adequate statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of April 18, 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 Technology Center AU 1625 for appropriate action in the normal course of business on the reply received October 23, 2006.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

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

In re Application of	:	
David Byrne Reese	:	
Application No. 10/849,602	:	DECISION ON PETITION
Filed: May 19, 2004	:	
Attorney Docket No. ODVFP008	:	

This is a decision on the Petition to Expunge, filed December 18, 2009 which is being treated as a petition under 37 CFR 1.59(b) to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the document titled Request for Continued Examination (RCE) filed on December 17, 2009, be expunged from the record. Specifically the RCE filed on that day at 15:07:52 is requested to be expunged. Petitioner states this was the second RCE filed on December 17, 2009 was filed inadvertently.

The petition is deficient because there is no statement that:

(B) 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.

Petitioner is directed to MPEP 724.05(II).

Petitioner indicates there is no fee for this request but petitions under 37 CFR 1.59(b) requires a petition fee set forth in 37 CFR1.17(g) which is currently $200. This petition fee has been charged to petitioner's deposit account.

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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P.O. Box 1539
King of Prussia, PA 19406-0939

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SEP 09 2005

OFFICE OF PETITIONS

In re Application of	:
Craig, et al.	: DECISION ON PETITION
Application No. 10/849,603	:
Filed: May 19, 2004	:
Atty. Dkt. No.: P32672C1	:

This decision is in response on the "PETITION TO CORRECT FILE DATE," filed August 11, 2005. This matter is being treated under 37 CFR 1.10(c) to accord the above-identified application a filing date of May 19, 2004.

Petitioners allege that the application was filed May 19, 2004 rather than May 18, 2004. Petitioners have included as proof of actual filing via USPS Express Mail service a copy of an Express Mail label bearing tracking number EL964437102US (the same Express Mail number found on the application transmittal letter accompanying the original application papers located in the official file) and a "date-in" of November 18, 2004. The label also bears a postmark of May 19, 2004. However, supplemental data procured from the USPS has substantiated petitioners' contention that the package was accepted into Express Mail service on May 19, 2004 and delivered to the USPTO on May 21, 2004.

In view of the above, the petition under 37 CFR 1.10(c) to accord the above-identified application a filing date of May 19, 2004 is hereby **GRANTED**.

No fee is due in connection with this petition.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of May 19, 2004.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

In re Application of
COOK et al
Application No.: 10/849,620
Filing Date: May 19, 2004
Attorney Docket No.: 60130-2062; 03MRA0386

DECISION ON PETITION
UNDER 37 CFR 1.137

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

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 17, 2006, which set a three (3) month shortened statutory period for response. 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 on August 18, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(a) in that (1) the reply in the form of an amendment and remarks; (2) the petition fee; and (3) the required showing of unavoidable delay have been received. Accordingly, the reply to the non-final Office action mailed May 17, 2006 is accepted as having been unavoidably delayed.

A total of $1,000.00 (i.e. $1,500.00 petition fee under 37 CFR 1.137(b) - $500.00 petition fee under 37 CFR 1.137(a)) will be refunded to Deposit Account No. 50-1482.

This application is being referred to Technology Center AU 3679 for appropriate action on the reply in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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MCDONNELL BOEHNEN HULBERT & BERGHOFF
300 S. WACKER DRIVE, 31ST FLOOR
CHICAGO, IL 60606

COPY MAILED
MAR 16 2006
OFFICE OF PETITIONS

In re Application of	:
Ronald J. Fucci et al	:
Application No. 10/849,674	: DECISION GRANTING PETITION
Filed: May 20, 2004	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 03-1037	:

This is a decision on the petition under 37 CFR 1.137(b), filed December 15, 2005, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on May 20, 2005. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

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

required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been 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 3623 for examination in due course.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions

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SEP 25 2007

OFFICE OF PETITIONS

In re Application of

Wolfgang Kaczmarek :

Application No. 10/849,679

: DECISION ON PETITION

Filed: May 20, 2004

:

Attorney Docket No. 2003P00788 US

This is a decision on the petition under 37 CFR 1.137(b), filed, September 5, 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 September 20, 2007, 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 December 21, 2007. A Notice of Abandonment was mailed April 16, 2007.

The amendment filed September 5, 2007, is noted.

The application is being forwarded to Technology 3700, GAU 3744 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : July 20, 2006

TO SPE OF : ART UNIT 1732

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/849683 Patent No.: 7,045,084 B1

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: _____

_____

_____

_____

_____

SPE

1732
Art Unit

1 1 OCT 2007

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THE GLIDDEN COMPANY
15885 WEST SPRAGUE ROAD
STRONGVILLE OH 44136

In re Application of: WILLIAMS, Neal Application No.: 10/849,684 Filing Date: May 20, 2004 Attorney Docket No.: 51018 For: Aqueous Coating Compositions Containing Polyurethane-Acrylic Hybrid Polymer Dispersions	DECISION ON PETITION UNDER 37 CFR 1.182

This decision is issued in response to the "Petition To Correct Or Convert A Patent Application Designated As A National Application Filed Under 35 U.S.C. 111(a) To An Application Filed Under 35 U.S.C. 371 In Accordance With 37 CFR 1.182" filed July 11, 2007. Deposit Account No. 50-2206 will be charged the required petition fee.

BACKGROUND

On December 04, 2002, applicant filed international application PCT/EP02/13757. The international application claimed a priority date of December 21, 2001, and it designated the United States. On 03 July 2003, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., June 21, 2004.

On May 20, 2004, applicants initiated the present U.S. application by filing a "Utility Patent Application Transmittal" (Form PTO/SB/05), accompanied, among other materials, a specification and claims, and a preliminary amendment. The preliminary amendment indicated that the application was intended to be "the national phase application under 35 U.S.C. 371 of international patent application PCT/EP02/13757." However, the Form PTO/SB/05 Transmittal Letter used by applicant specifically states that it is for use "[o]nly for new nonprovisional application under 37 CFR 1.53(b)."

On July 20, 2004, the USPTO mailed a "Notice To File Missing Parts Of Nonprovisional Application Filed Under 37 CFR 1.53(b)" indicating that the submission had been treated as a filing under 35 U.S.C. 111(a) and 37 CFR 1.53(b). The Notice required applicants to submit an oath or declaration and the surcharge for late filing of the oath or declaration.

On August 16, 2004, applicant filed a "Response To Notice To File Missing Parts Of Nonprovisional Application" accompanied by payment of the required surcharge and a

declaration executed by the inventor. The declaration asserted claims to foreign priority benefits under 35 U.S.C. 119 to UK application 0130651.3, filed on 21 December 2001 (the priority application in PCT/EP03/13757), and to PCT/EP03/13757.

On May 21, 2007, a "Notice Of Allowance And Fee(s) Due" (Form PTOL-85) was issued.

On July 11, 2007, applicants filed the "Petition To Correct Or Convert A Patent Application Designated As A National Application Filed Under 35 U.S.C. 111(a) To An Application Filed Under 35 U.S.C. 371 In Accordance With 37 CFR 1.182" considered herein. The petition requests that the present application be treated as a national stage filing under 35 U.S.C 371 of international application PCT/EP03/13757.

On August 21, 2007, applicant submitted the issue and publication fees.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

> The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a) of the MPEP states the following:

> If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

As noted above, applicant's May 20, 2004 filing included both an amendment indicating that the application was a national stage filed under 35 U.S.C. 371(c), and a Form PTO/SB/05 Transmittal Letter that indicates it is for use "[o]nly for new nonprovisional application under 37 CFR 1.53(b)." The inclusion of these conflicting indications of applicant's intent in the materials filed on May 20, 2004 constitutes "conflicting instructions" which, pursuant to the MPEP, requires that the application be treated under 35 U.S.C. 111(a). Accordingly, the original papers deposited on May 20, 2004 were correctly treated as a filing under 35 U.S.C. 111(a).

U.S Statutes and regulations do not make specific provisions for converting an application filed under 35 U.S.C. 111(a) to a national stage application filed under 35 U.S.C. 371 and, as such, the Office does not grant petitions for such conversions as a matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause necessitating such conversion (i.e., the loss of patent rights) and where no other remedy is available. The present petition does not include any such showing.

Based on the above, the application papers filed May 20, 2004 were properly processed under 35 U.S.C. 111(a), and applicants have failed to demonstrate sufficient cause that would justify a conversion. On this record, granting of a petition to convert the application to a filing under 35 U.S.C 371 is not appropriate.

CONCLUSION

The petition to convert the application to a filing under 35 U.S.C. 371 is **DISMISSED** without prejudice. The present application remains a filing under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

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

Richard M. Ross
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

10/11/2007 SBASHEIR 00000002 502206 10849684
01 FC:1462 400.00 DA

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OFFICE OF PETITIONS

In re Application of	:	
Neal Williams	:	
Application No. 10/849,684	:	DECISION GRANTING PETITION
Filed: May 20, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 51018	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 14, 2007, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 21, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 1713 to consider the request for continued examination under 37 CFR 1.114. The Office of PCT Legal will consider the concurrently filed petition under 37 CFR 1.78(a)(3).

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

ROETZEL & ANDRESS
222 SOUTH MAIN ST.,
AKRON, OH 44308

---

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

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/849,684	05/20/2004	Neal Williams	51018

CONFIRMATION NO. 7549

38157
THE GLIDDEN COMPANY
15885 WEST SPRAGUE ROAD
STRONGVILLE, OH 44136

IMPROPER CPOA LETTER

OC000000027355393

Date Mailed: 12/18/2007

NOTICE REGARDING POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/14/2007. The Power of Attorney in this application is not accepted for the reason(s) listed below:

- The Power of Attorney is from an assignee and the Certificate required by 37 CFR 3.73(b) has not been received.

/kocreasy/

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

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11 MAR 2008

GEORGE M. MOXON II
ROETZEL & ANDRESS
222 S. MAIN ST.
AKRON OH 44308

In re Application of:
WILLIAMS, Neal
Application No.: 10/849,684
Filing Date: May 20, 2004
Attorney Docket No.: 51018
For: Aqueous Coating Compositions Containing Polyurethane-Acrylic Hybrid Polymer Dispersions

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

This decision is issued in response to the "Petition To Claim The Benefit Of An Earlier Filing Date Under 37 CFR 1.78(a)(3)" filed December 14, 2007. The petition seeks acceptance of an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior filed international application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

(1) the reference to the prior-filed application, as required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i), unless previously submitted;
(2) the surcharge set forth in 37 CFR 1.17(t);
(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 present petition does not comply with item (1) above.

An amendment adding a reference to the prior-filed international application to the first sentence of the specification following the title was included in a concurrently filed amendment. However, the amendment is not acceptable as drafted because it does not identify the prior filed international application in the required manner. Specifically, the amendment does not set forth the international filing date of the international application, as expressly required by 37 CFR

1.78(a)(2).[1] In addition, the ADS filed with the present petition improperly claims benefit to the PCT application as a foreign priority claim, rather than a domestic benefit claim.[2] Finally, the amendment to the specification is not acceptable as drafted because it improperly incorporates by reference the prior-filed application; a request for incorporation by reference of a prior filed application may not be added after the filing date of the present application. See Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273(C.A.D.C. 1980). *Note also* MPEP 201.06(c).

Before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[3] is required, along with a renewed petition under 37 CFR 1.78(a)(3). The substitute amendment must include a reference to the prior filed application that is acceptable under 37 CFR 1.78(a)(2).

No additional petition fee is required.

It is noted that the explanation as to the delay in filing the present claim of priority provided by applicant is interpreted as the statement required by 37 CFR 1.78(a)(3)(iii), that is, 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." Applicant must inform this Office if this is not If this is not a correct interpretation of the statements in the present petition.

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

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

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

By fax: (571) 273-8300
ATTN: Office of PCT Legal Administration

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[1] It is also noted that the amendment misidentifies the present application as "a continuation application under 35 U.S.C. 371." The present application is not a national stage application under 35 U.S.C. 371; rather, the application is a U.S. non-provisional application filed under 35 U.S.C. 111(a).
[2] The present application was not filed within twelve months of the PCT application, as required for a claim of foreign priority under 35 U.S.C. 119(a).
[3] *Note* 37 CFR 1.121

Any questions concerning this matter may be directed to Richard M. Ross at (571) 272-3296.

Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

2 9 JUL 2008

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GEORGE M. MOXON II
ROETZEL & ANDRESS
222 S. MAIN ST.
AKRON OH 44308

In re Application of: WILLIAMS, Neal	:	
Application No.: 10/849,684	:	DECISION ON RENEWED PETITION
Filing Date: May 20, 2004	:	
Attorney Docket No.: 51018	:	(37 CFR 1.78(a)(3))
For: Aqueous Coating Compositions	:	
Containing Polyurethane-Acrylic Hybrid	:	
Polymer Dispersions	:	

This decision is issued in response to the "Revised Petition To Claim The Benefit Of An Earlier Filing Date Under 37 CFR 1.78(a)(3)" filed March 21, 2008, treated herein as a renewed petition seeking acceptance of an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed international application identified in the concurrently filed amendment.

The renewed petition is **DISMISSED**.

The decision mailed herein on March 11, 2008 dismissed applicant's original petition under 37 CFR 1.78(a)(3) for failure to include an amendment or Application Data Sheet ("ADS") containing a proper reference to the prior-filed international application. The decision indicated that the amendment provided by applicant was defective because it did not set forth the international filing date of the international application, as expressly required by 37 CFR 1.78(a)(2), and because it improperly sought to incorporate by reference the prior-filed application. The decision also noted that the amendment incorrectly identified the present application as having been filed under 35 U.S.C. 371, and it stated that the ADS filed by applicant improperly claims benefit to the PCT application as a foreign priority claim, rather than a domestic benefit claim. The decision required applicant to file a renewed petition accompanied by a revised amendment that included an acceptable reference to the international application.

The present renewed petition was accompanied by a supplemental amendment to the first paragraph of the specification; however, the supplemental amendment again fails to contain an acceptable reference to the international application. Specifically, the amendment fails to identify the present application as a continuation of the international application; instead, the amendment refers to the present application as a national application under 35 U.S.C. 371. In addition, the ADS included with the petition again improperly claims benefit to the PCT application as a foreign priority claim.

The present petition appears to be premised on a misinterpretation of the previous decisions issued in this application. For example, the petition indicates that the present application was removed from issue in order to permit the conversion of the application to a national stage

application under 35 U.S.C. 371. However, as indicated in the decision mailed herein on 11 October 2007, this application was properly treated by the USPTO as a filing under 35 U.S.C. 111(a), and the conversion of the application to a filing under 35 U.S.C. 371 is not appropriate on the present record. By removing the application from issue, applicants created the opportunity to file a grantable petition under 37 CFR 1.78 and thereby permit the present application to be treated as a continuation of the international application and to obtain the benefit of the earlier filed applications. The application will, however, remain a filing under 35 U.S.C. 111(a), not a national stage application filed under 35 U.S.C. 371.

In addition, petitioner appears to have misinterpreted the statement in the previous decision that the proposed amendment misidentified the application as a "continuation application under 35 U.S.C. 371." Such statement referred only to the erroneous identification of the present application as a filing under 35 U.S.C. 371. The decision did not indicate that the use of the term "continuation" was improper. To the contrary, the statement that the present application is a "continuation" of the prior-filed application is a requirement of a proper reference to the prior-filed application. See MPEP section 201.11(III)(A).

Before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] is required, along with a second renewed petition under 37 CFR 1.78(a)(3). The substitute amendment must include a reference to the prior filed application that is acceptable under 37 CFR 1.78(a)(2), for example: "The present application is a continuation of international application PCT/EP02/13757, filed December 04 2002." As an alternative to a substitute amendment, applicants may submit a supplemental ADS (37 CFR 1.76) which properly identifies the present application as a "continuation" of international application PCT/EP02/13757, filed December 04, 2002.

No additional petition fee is required.

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

By mail: Mail Stop PCT Legal Administration
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of PCT Legal Administration

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[1] *Note* 37 CFR 1.121

Any questions concerning this matter may be directed to Richard M. Ross at (571) 272-3296.

Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration

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GEORGE M. MOXON II
ROETZEL & ANDRESS
222 S. MAIN ST.
AKRON OH 44308

In re Application of: WILLIAMS, Neal	:	
Application No.: 10/849,684	:	DECISION ON SECOND
Filing Date: May 20, 2004	:	RENEWED PETITION
Attorney Docket No.: 51018	:	(37 CFR 1.78(a)(3))
For: Aqueous Coating Compositions	:	
Containing Polyurethane-Acrylic Hybrid	:	
Polymer Dispersions	:	

This decision is issued in response to the "Second Renewed Petition To Claim The Benefit Of An Earlier Filing Date Under 37 CFR 1.78(a)(3)" filed August 12, 2008, treated herein as a renewed petition seeking acceptance of an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of the prior-filed international application identified in the concurrently filed amendment.

The second renewed petition is **DISMISSED**.

In decisions mailed by this Office on March 11, 2008 and July 29, 2008, applicant's previous petition under 37 CFR 1.78(a)(3) were dismissed for failure to satisfy all the requirements of a grantable petition. Specifically, the amendments submitted with the previous petitions did not contain an acceptable reference to the prior-filed international application.

The present renewed petition is accompanied by an amendment to the first sentence of the specification to include a benefit claim under 35 U.S.C. 120 to international application PCT/EP02/13751. However, international application PCT/EP02/13751 does not have an inventor in common with the present application, as required under 35 U.S.C. 120.

It is noted that the present petition is also accompanied by a supplemental ADS that contains a domestic benefit claim to international application number, PCT/EP02/13757. However, the supplemental ADS does not comply with 37 CFR 1.76(c)(2), which requires that the supplemental ADS "must identify the information that is being changed, preferably with underlining for insertions, and strike-through or brackets for text removed."[1] In addition, the supplemental ADS improperly claims domestic benefit to foreign application GB1030651.3.

[1] See also the instructions to the PDF fillable ADS form used by applicant: "**Do not use this ADS as a Supplemental ADS.** This form does not comply with the requirements fro a Supplemental Application Data Sheet (ADS)."

Before the petition under 37 CFR 1.78(a)(3) can be granted, a proper amendment to the specification (37 CFR 1.121) or supplemental ADS (37 CFR 1.76(c)) correcting the above noted defect(s) is required.

It is noted that a Corrected Filing Receipt was mailed 15 September 2008 improperly identifying the present application as a continuation of PCT/EP02/13751. A Corrected Filing Receipt removing this domestic benefit claim is enclosed herewith.

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

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

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Mail Stop PCT Legal Administration
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of PCT Legal Administration

Any questions concerning this matter may be directed to Richard M. Ross at (571) 272-3296.

Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration

Enclosure:
Corrected Filing Receipt

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OFFICE OF PETITIONS

In re Application of	:	
Eirik Vimme	:	
Application No. 10/849,698	:	ON PETITION
Filed: May 20, 2004	:	
Attorney Docket No. 063170.7635	:	

This is a decision on the petition under 37 CFR 1.181, filed November 22, 2005. In the alternative, petitioner has requested the petition be treated under 37 CFR 1.137(b).

This application became abandoned for failure to timely submit a complete response to the Notice to File Missing Parts mailed July 20, 2004. The Notice set an extendable 2 month period for reply. Five (5) months extension of time pursuant to 37 CFR 1.136(a) was obtained. Accordingly, this application was held abandoned on February 21, 2005. A Notice of Abandonment was mailed on November 4, 2005.

The petition to withdraw the holding of abandonment and the petition revive under 37 CFR 1.137(b) are **DISMISSED AS MOOT** in light of the Office of Initial Patent Examination's withdrawal of the Abandonment (May 15, 2006) prior to the rendering of a petition decision.

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Bhattacharya et al.
Application No. 10/849,707
Filed: May 20, 2004
Attorney Docket No.:PC25324A

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 26, 2007, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply to a Restriction Requirement mailed October 10, 2006. The Office Action set a one (1) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on November 11, 2006. A Notice of Abandonment was mailed on May 2, 2007.

This petition is hereby **GRANTED**.

The Office hereby acknowledges the receipt of the Response to the Restriction Requirement submitted with the instant petition.

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.

This application is being forwarded to Technology Center 1600 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Jason G. Tebbutt
Pfizer Inc.
150 East 42nd Street (150/5/49)
New York, NY 10017-5755

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

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JUN 09 2008

OFFICE OF PETITIONS

In re Application of

Bonavita, et al. :

Application No. 10/849,709

: DECISION ON PETITION

Filed: May 19, 2004

:

Attorney Docket No. TI-35818

This is a decision on the petition under 37 CFR 1.137(b), filed May 18, 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 October 16, 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 January 17, 2007.

The amendment filed May 18, 2007, is noted.

The application is being forwarded to Technology Center 2100, GAU 2116 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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THE GATES CORPORATION
IP LAW DEPT. 10-A3
1551 WEWATTA STREET
DENVER CO 80202

MAILED

JUN 23 2010

OFFICE OF PETITIONS

In re Application of :
Clarke et al. :
Application No. 10/849,716 : ON APPLICATION FOR
Filed: May 20, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. C02-095A :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION, filed January 28, 2010. The petition will be treated under 37 C.F.R. § 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is one hundred forty-one (141) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

Pursuant to applicants' authorization, 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) will be charged to deposit account no. 07-0475.

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).

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office 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) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Schwegman, Lundberg, Woessner & Kluth, P.A.
P.O. Box 2938
Minneapolis, MN

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JUL 19 2007

OFFICE OF PETITIONS

In re Application of Gregory P. Wittenberg Application No. 10/849,757 Filed: May 20, 2004 Attorney Docket No. 1321.010	: : : : : :	DECISION ON REQUESTS TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney or agent under 37 C.F.R. § 1.36(b), filed January 29, 2007.

The requests are **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to the attorneys associated with Customer Number 21186 has been revoked by the assignee of the patent application on May 1, 2007. Accordingly, the requests to withdraw under 37 C.F.R. § 1.36(b) are 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 Kimberly Inabinet at 571-272-4618.

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Boyle Fredrickson Newholm Stein &
Gratz, S.C.
250 E. Wisconsin Avenue
Suite 1030
Milwaukee, WI 53202

OK to enter /B.C./ 06/17/2009

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

ATTORNEY DOCKET NUMBER: 200311132-1

IN RE APPLICATION OF: U.S. Patent No. 7,203,063

USPTO CONFIRMATION CODE: 7353

APPLICATION NO.: 10/849,759

FILED: May 21, 2004

EXAMINER: Boris Chervinsky

GROUP ART UNIT: 2835

FOR: SMALL FORM FACTOR LIQUID LOOP COOLING SYSTEM

37 CFR 1.322 & 37 CFR 1.323 REQUEST FOR CERTIFICATE OF CORRECTION

HONORABLE COMMISSIONER OF PATENTS & TRADEMARKS

Sir:

The following is a request for a certificate of correction in Serial Number 10/849,759, now Patent Number 7,203,063.

A certificate of correction under 35 USC 254 is respectfully requested in the above-identified patent.

☐ All errors were the fault of the USPTO, no fee required. In the event that a further fee is required, please charge the amount to Deposit Account No. 082025.

☐ All errors were the fault of the applicant and, accordingly, please charge **$100.00** to our Deposit Account No. 082025. In the event that a further fee is required, please charge the amount to the same Deposit Account.

☒ The errors were the fault of both the applicant and USPTO and, accordingly, please charge **$100.00** to our Deposit Account No. 082025. In the event that a further fee is required, please charge the amount to the same Deposit Account.

The exact locations where the errors appear in the patent and patent application are as follows:

In column 9, line 3, below "cooling system as incorporated above by reference." insert - - With reference to FIG. 10, a second variation, which is applicable to the first or second embodiments, may be similar to the first or second embodiments in many features. This variation differs in that rather than (or supplemental to) drawing in ambient air to cool components 501, a source of chilled fluid 503 such as air or another gaseous fluid (or conceivably even a liquid fluid for an appropriate application) is in fluid communication with the chassis 505, preferably via passageways 507 within the rack 509. The chilled fluid preferably enters the upstream chamber of the first embodiment, or the air mover intake manifold of the second embodiment, so as to pass through the heat exchanger 511. Similar to as noted above, modular racks configured for embodiments of this variation might also receive typical air-cooled chassis, as well as receive similarly configured chassis (e.g., chassis configured to receive chilled air from a rack) that lack any type of liquid cooling, or that are configured with an evaporative cooling system as incorporated above by reference. - -.
(Amendment to specification filed on Nov. 28, 2005, page 2 of 14, lines 16-28)

In column 14, line 28, in Claim 26, delete "comprising;" and insert - - comprising: - -, therefor.
(Amendment to claims filed on May 30, 2006, page 9 of 20, in Claim 38, line 2)

The requested corrections are attached on Form PTO 1050.

Respectfully Submitted

5/28/09
DATE

Denise A. Lee
Name: Denise A Lee
Registration No.: 35,931

Attorney/Agent of Record

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

OK to enter. /B.C./ 06/17/2009

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 : 7,203,063

APPLICATION NO. : 10/849,759

ISSUE DATE : Apr. 10, 2007

INVENTOR(S) : Cullen E. Bash, et al.

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

In column 9, line 3, below "cooling system as incorporated above by reference." insert - - With reference to FIG. 10, a second variation, which is applicable to the first or second embodiments, may be similar to the first or second embodiments in many features. This variation differs in that rather than (or supplemental to) drawing in ambient air to cool components 501, a source of chilled fluid 503 such as air or another gaseous fluid (or conceivably even a liquid fluid for an appropriate application) is in fluid communication with the chassis 505, preferably via passageways 507 within the rack 509. The chilled fluid preferably enters the upstream chamber of the first embodiment, or the air mover intake manifold of the second embodiment, so as to pass through the heat exchanger 511. Similar to as noted above, modular racks configured for embodiments of this variation might also receive typical air-cooled chassis, as well as receive similarly configured chassis (e.g., chassis configured to receive chilled air from a rack) that lack any type of liquid cooling, or that are configured with an evaporative cooling system as incorporated above by reference. - -.

In column 14, line 28, in Claim 26, delete "comprising;" and insert - - comprising: - -, therefor.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, Colorado 80527-2400

This collection of information is required by 37 CFR 1.322, and 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patent, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070530

DATE : May 30, 2007

TO SPE OF : ART UNIT 1775

SUBJECT : Request for Certificate of Correction on Patent No.: 6,884,516

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: Jennifer McNeil **Art Unit** 1775

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OFFICE OF PETITIONS

PILLSBURY WINTHROP SHAW PITTMAN
P.O. BOX 10500
MCLEAN VA 22102

In re Application of	:	
Koji Takazawa	:	
Application No. 10/849,831	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 008312-0309893	:	

This is a decision on the petition, filed April 24, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on March 28, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 1774 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

MAIL

SEP 21 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: SAKAGUCHI et al.
Application No. 10/849,832
Filed: May 21, 2004
For: STORAGE SYSTEM

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

This is a response to the petition filed 10 August 2005, under 37 CFR §1.102(d) and MPEP §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

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

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

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

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

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

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

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

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

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

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

ds

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UNITED STATES DEPARTMENT OF COMMERCE
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OGILVY RENAULT LLP
1, Place Ville Marie
SUITE 2500
MONTREAL, QC H3B 1R1
CANADA

Mail Date: 04/21/2010

Applicant	: Russell N. Owen	: DECISION ON REQUEST FOR
Patent Number	: 7636565	: RECALCULATION of PATENT
Issue Date	: 12/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/849,833	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1128** 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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ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

Mail Date: 04/21/2010

Applicant	: Myeong-Ae Kang	: DECISION ON REQUEST FOR
Patent Number	: 7596172	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/849,844	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1072** 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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Kuo-Chuan Hung
P.O. Box No. 6-57
Junghe, Taipei 235 TW TAIWAN

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JUN 18 2007

OFFICE OF PETITIONS

In re Application of

Kuo-Chuan Hung

Application No. 10/849,863

Filed: May 21, 2004

Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed on May 29, 2007.

The petition is **granted**.

This application was held abandoned on November 11, 2006, after no reply was received to the non-final Office action mailed August 10, 2006. The notice set forth a shortened statutory period for reply of three months from its mailing date. A Notice of Abandonment was mailed on April 10,2 007. The instant petition was filed on May 29, 2007. Petitioner maintains that the notice of August 10, 2006, was never received and provides a copy of the relevant docket records as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file will be directed to Technology Center 3600, GAU 3637 for further processing, including remailing of the non-final Office action and resetting of the period for reply.

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

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OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA VA 22320-4850

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FEB 28 2008

OFFICE OF PETITIONS

In re Application of	:	
Tsuyoshi Kaneko	:	
Application No. 10/849884	:	
Filing or 371(c) Date: 05/21/2004	:	
Attorney Docket Number:	:	
119593	:	ON PETITION

This is a decision on the "Petition Under 37 C.F.R. § 1.181 to Reset Period for Reply to Office Action and to Withdraw Holding of Abandonment – Office Action not Received, filed June 14, 2007. The petition is properly treated as a Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action under 37 CFR 1.181(a) See, MPEP 711.03(c). The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Office communication, mailed March 15, 2007. The Office communication set a one (1) month or 30 day period for reply, whichever was longer. No response having been received, the application became abandoned on April 16, 2007. A Notice of Abandonment was mailed June 7, 2007.

With the instant petition, Applicant has demonstrated non-receipt of the Office communication by a preponderance of the evidence[1].

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

No petition fee has been charged and none is due.

The application will be referred to the Publishing Division for re-mailing of the Office communication to the current correspondence address and re-setting the period for reply.

[1] Office records reveal that the Office communication was returned to this Office by the USPS undelivered.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Richard C. Litman
LITMAN LAW OFFICES, LTD.
P.O. Box 15035
Arlington, VA 22215

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AUG 29 2008

OFFICE OF PETITIONS

In re Application of	:	
Isaiah Freeman	:	
Application No. 10/849,889	:	DECISION ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 21763.00	:	

This is a decision on the petition under 1.137(b) filed January 23, 2008, to revive the above-identified application.

The application became abandoned for failure to timely file a proper reply to the final Office action mailed October 10, 2006. A Notice of Abandonment was mailed on May 7, 2007.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Dolph H. Torrence 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.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and $255 fee; (2) the petition fee of $770; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application is being referred to Technology Center Art Unit 3617, to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

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

In re Application of :
Sumio Utsunomiya :
Application No. 10/849,890 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No. 119574 :

This is a decision on the petition, filed February 16, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on January 24, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2818 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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ALEXANDRIA, VA 22320

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JUN 27 2007

OFFICE OF PETITIONS

In re Application of
Hiroyuki Kobayashi et al
Application No. 10/849,891
Filed: May 21, 2004
Attorney Docket No. 119821

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

This is a decision on the petition, filed June 25, 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 May 7, 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 2885 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\june10\849891.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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BOLTON ON L7E 5S5 CA CANADA

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OFFICE OF PETITIONS

In re Application of :
Raymond W. Zhang, et al. :
Application No. 10/849,897 :
Filed: May 21, 2004 :
Attorney Docket No. H-717-0-US :

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 18, 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)(II)(C) and (D). The instant petition lack(s) item(s) (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 October 6, 2005. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not prima facie place the application in condition for allowance, 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).

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 April Wise at (571) 272-1642.

Irvin Dingle
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/849,897	Applicant(s) ZHANG ET AL.	
	Examiner G. Nagesh Rao	Art Unit 1722	

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

THE REPLY FILED 18 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

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

NOTICE OF APPEAL

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

AMENDMENTS

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

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *4,22,27 and 35*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-3, 5-21, 23-26, 28-34, and 36-40*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Continuation of 13. Other: The prior art 103 rejection put forth by examiner provides motivation for combining the analogous art and obviating the features claimed by applicant. Upon review of remarks, examiner is inclined to disagree with applicant's remarks, the cited motivation is in the office action applied, and examiner is pointing out that features as written in the claim render a "resultant effective vairability" that give rise to further enhancing the motivation already cited for combining the prior art. As noted before examiner has indicated allowable subject matter and suggests applicant consider incorporating those elements into the independent claims.

DUANE SMITH
PRIMARY EXAMINER
3-12-07

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In re Application of	:	
Raymond W. Zhang, et al.	:	
Application No. 10/849,897	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. H-717-0-US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 8, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of October 6, 2005. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). 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 January 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 a Request for Continued Examination (RCE) and fee of $790, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 1722 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.

April M. Wise
Petitions Examiner
Office of Petitions

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MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA VA 22182-3817

JUL 03 2008

In re Application of: TACHIHARA et al.	:
Appl. No.: 10/849,440	: DECISION ON PETITION
Filed: May 20, 2004	:
For: NAILER	:

This is a decision on the petition filed on June 4, 2008 by which petitioners request the USPTO consider the Information Disclosure Statement (IDS) filed April 10, 2008. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed as moot.

Review of the application shows an Office action was issued by the examiner on June 12, 2008 which included a supplemental Notice of Allowability and an indication the April 10, 2008 IDS has been considered by the examiner. Note the time for payment of the issue fee remains running as set in the Notice of Allowance and Fee(s) Due mailed May 28, 2008 and is not reset by the mailing of the supplemental Notice of Allowability. As relief has been provided by the examiner, the petition appears moot.

PETITION DISMISSED

Any questions concerning this decision should be directed to Special Programs Examiner J. Harrison at 571-272-449.

Karen M. Young

Karen M. Young, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,912	05/21/2004	Kumiko Tei	253541US0X CONT	3057

22850 7590 10/19/2009
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
WOLLENBERGER, LOUIS V

ART UNIT	PAPER NUMBER
1635	

NOTIFICATION DATE	DELIVERY MODE
10/19/2009	ELECTRONIC

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

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

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 1 9 2009

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

In re Application of:	:
Tei et al.	:
Serial No.: 10/849,912	: PETITION DECISION
Filed: May 21, 2004	:
Attorney Docket No.: **253541US0X CONT**	:
	:

This is in response to the petition under 37 CFR § 1.182, filed April 14, 2009, requesting that the examiner's objection to the specification for lack of written description be reviewed and the application pages be corrected.

The delay in responding to this petition is regretted but it has only just been brought to the attention of the deciding Official.

BACKGROUND

The petition concerns the issue of whether or not some of the requested changes set forth in the amendment of April 19, 2007 resulted in the addition of new matter to the disclosure.

On April 23, 2008, the examiner mailed to Applicants a non-final Office action containing, *inter alia*, an objection to the amendment filed April 19, 2007 for introducing new matter into the specification. Specifically, the terms objected to by the examiner are as follows:

> The amendments to the specification filed 4/19/07, replacing the words "transfect," "transfecting," and/or "transfection" with "introduce," "introducing," and/or "introduced" are objected to under 35 U.S.C. 132(a) because they introduce new matter into the disclosure.
>
> The amendment to the claims submitted on 4/19/07, introduced the limitation "introducing[,] into the cell" into claims 1, 16, and 17 and new claim 35. The phrase also appears in new claim 36, submitted by amendment on 12/28/07.

In response thereto, on July 22, 2008 applicants argued that the amendments to the specification and claims were to correct a translation error at the stage of nationalization into the US. Applicants also submitted with the Supplemental Response filed February 6, 2008, a certified

English translation of the PCT/JP02/12183 priority application having correct translation of "DOUNYU--SURU" (i.e., "introduce", "introducing", and/or "introduced", etc.). Mr. Shoji Sawai certified that the translation was correct and complete.

On October 14, 2008, the examiner repeated the objections set forth in the non-final rejection of April 23, 2008.

On April 14, 2009, Applicants submitted the instant petition.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition, Applicants argue that these requested amendments to the specification and claims were made to correct a translation error, and that the amendments do not introduce new matter. Applicants points are well taken are persuasive.

DECISION

The petition is subsequently **GRANTED**.

This application will be forwarded to the examiner for an action not inconsistent with this decision, i.e. entry of the amendments to the claims and specification as set forth supra in the next Office action.

Should there be any questions about this decision please contact Quality Assurance Specialist Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Remy Yucel
Director, Technology Center 1600

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CLEVELAND OH 44115

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OFFICE OF PETITIONS

In re Application of

Kempe, et al. :

Application No. 10/849,919

: DECISION ON PETITION

Filed: May 21, 2004

:

Attorney Docket No. A3354-US-NPXERZ2
01619

This is a decision on the petition under 37 CFR 1.137(b), filed April 8, 2009, 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 restriction/election requirement mailed April 17, 2008, which set a shortened period for reply of one month from its mailing date. A response was not received within the allowable period. The application became abandoned on May 18, 2008. A Notice of Abandonment was mailed on February 24, 2009.

The election filed April 8, 2009, is noted.

The application is being forwarded to Technology Center 2600, GAU 2626 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

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Alexandria, VA 22313-1450
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Paper No. 121604

SINSHEIMER, SCHIEBELHUT, BAGGETT
1010 Peach Street
San Luis Obispo, CA 93401

In re Application of:	:	
Kundtz, et al	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Serial No.: 10/849,962	:	
Filed: May 19, 2004	:	
Attorney Docket No.: **3170.004**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed October 29, 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 Thomas F. Lebans, on behalf of himself and all the attorneys associated with Customer No. 26375.

The request is APPROVED. There are no attorneys of record at this time.

All future communications from the Office will be directed to, the law firm of Darby & Darby, at the address indicated below until otherwise notified by applicant.

Inquiries related to this decision should be directed to Hien H. Phan at (571) 272-1606.

Hien H. Phan, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

HHP/nmc

cc: Darby & Darby
1191 Second Avenue
Seattle, WA 98101

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INTERNATIONAL ENGINE INTELLECTUAL PROPERTY COMPANY
4201 WINFIELD ROAD
P.O. BOX 1488
WARRENVILLE, IL 60555

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JAN 2 8 2005

OFFICE OF PETITIONS

In re Application of	:
Gregory D. Watkins et al	:
Application No. 10/849,996	: DECISION GRANTING STATUS
Filed: May 20, 2004	: UNDER 37 CFR 1.47(A)
For: CORE ELEMENT FASTENING AND ASSEMBLY METHOD	:

This is in response to the petition under 37 CFR 1.47(a), filed November 12, 2004.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, deposit account No. 14-0603 will be charged $130.00 for the petition fee.

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

This matter is being referred to Technology Center AU 2872 for examination in due course.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DANIEL DAVIS
1107 N. MITTHOFFER RD
INDIANAPOLIS, IN 46299

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JAN 2 8 2005

OFFICE OF PETITIONS

In re Application of
Watkins; Wildrick and Davis
Application No. 10/849,996
Filed: May 20, 2004
For: CORE ELEMENT FASTENING AND ASSEMBLY METHOD

Dear Mr. Davis:

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 (571) 272-3220. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

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

cc:
INTERNATIONAL ENGINE INTELLECTUAL PROPERTY COMPANY
4201 WINFIELD ROAD, P.O. BOX 1488
WARRENVILLE, IL 60555

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Patent Group
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mail Date: 04/21/2010

Applicant	: Aron M. Holzman	: DECISION ON REQUEST FOR
Patent Number	: 7606918	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,010	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1147** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/27/07

TO SPE OF : ART UNIT 1713

SUBJECT : Request for Certificate of Correction on Patent No.: 7226968

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

9/18/07
Art Unit

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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DIW 10-04

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

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OCT 1 4 2004

OFFICE OF PETITIONS

In re Application of	:
Thomas A. Andersen	:
Application No. 10/850,079	: DECISION GRANTING
Filed: 19 May, 2004	: PETITION
Attorney Docket No. 14919	:

This is a decision in reference to the petition filed on 9 September, 2004, requesting that the above identified application be accorded a filing date of 19 May, 2004, with one (1) sheet of drawings as a part of the original disclosure.

The petition is **GRANTED**.

The application was filed on 19 May, 2004, without drawings. Accordingly, on 16 August, 2004, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings, and that the filing date would be the date the drawings were received. A two (2)-month period for reply was set.

In response, on 9 September, 2004, petitioner filed a petition accompanied by one (1) sheet of drawings. Petitioner asserts that the application papers filed on 19 May, 2004, included one (1) sheet of drawings which was misplaced after receipt in the USPTO. In support, a copy of petitioner's postcard receipt was supplied with the present petition. The postcard contains an Office date stamp dated 05-19-04 and containing the above-identified application number and identifying the application by inventor, invention title, and attorney docket number and itemizing, *inter alia*, "drawings". Petitioner requests that the application including one (1) sheet of drawings, be accorded a filing date of 19 May, 2004.

A review of the record reveals that no sheets of drawings received on 19 May, 2004, are located among the application papers received on that date. However, the evidence is convincing that the application papers deposited on 19 May, 2004, included one (1) sheet of drawings, which were subsequently misplaced in the Office. In this regard, as no drawings were received on filing, the Office may accept the one (1) sheet of drawings supplied with the present petition as the "drawings" filed on 19 May, 2004, for filing date purposes. Therefore, the application, including one (1) sheet of drawings, is entitled to a filing date of 19 May, 2004.

The "Notice" mailed on 16 August, 2004, is vacated.

In view of the above, the petition is granted. The petition fee of $130.00 is unnecessary and will be refunded. A Treasury Check refund has been scheduled.

The application will be processed with the copy of one (1) sheet of drawings supplied on 9 September, 2004, as a part of the original disclosure.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 19 May, 2004, using the application papers filed on that date, and the copy of one (1) sheet of drawings supplied with the present petition.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09-26-08

TO SPE OF : ART UNIT 3653

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/850089 Patent No.: 7398969

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.

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

Comments: _____

_____ **SPE** 3653 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS MN 55415-1002

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OCT 31 2006

OFFICE OF PETITIONS

In re Application of	:	
Lester A. Wanninger	:	
Application No. 10/850,090	:	DECISION ON PETITION
Filed: May 20, 2004	:	TO MAKE SPECIAL UNDER
Attorney Docket No. T386.12-0001	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed September 21, 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 declaration statement signed by the applicant. Accordingly, the above-identified application has been accorded "special" status.

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

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 3622 for action on the merits commensurate with this decision.

April Wise

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MICHAEL P. MORRIS
BOEHRINGER INGELHEIM CORPORATION
900 RIDGEBURY ROAD
P O BOX 368
RIDGEFIELD, CT 06877-0368

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JUL 3 1 2007

OFFICE OF PETITIONS

In re Application of	:
Montse Llinas-Brunet et al	:
Application No. 10/850,101	: DECISION GRANTING PETITION
Filed: May 20, 2004	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 13/119	:

This is a decision on the petition, filed July 30, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 21, 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 1625 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

C:\Documents and Settings\fhicks\My Documents\470\july10\850101.wpd

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MICHAEL P. MORRIS
BOEHRINGER INGELHEIM USA
CORPORATION
900 RIDGEBURY RD
P O BOX 368
RIDGEFIELD CT 06877-0368

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JUL 16 2009

OFFICE OF PETITIONS

In re Application of	:	
Llinas-Brunet et al.	:	
Application No. 10/850,101	:	ON APPLICATION FOR
Filed: May 20, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. 13-0119	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT filed March 9, 2009. Applicant submits that the correct patent term adjustment to be indicated on the patent is five hundred twenty-eight (528) days, not four hundred fifty-seven (457) 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 § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of

issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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MICHAEL P. MORRIS
BOEHRINGER INGELHEIM USA CORPORATION
900 RIDGEBURY RD
P O BOX 368
RIDGEFIELD, CT 06877-0368

Mail Date: 04/20/2010

Applicant	: Montse Llinas-Brunet	: DECISION ON REQUEST FOR
Patent Number	: 7585845	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,101	: OF WYETH
Filed	: 05/20/2004	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Michael P. Morris
Boehringer Ingelheim USA
900 Ridgebury Road
PO Box 368
Ridgefield CT 06877-0368

MAILED

JUN 21 2010

OFFICE OF PETITIONS

In re Patent No. 7,585,845	:
Llinas-Brunet et al.	: DECISION UPON REMAND AND
Issue Date: September 8, 2009	: RECONSIDERATION OF
Application No. 10/850,101	: PATENT TERM ADJUSTMENT
Filed: May 20, 2004	: AND NOTICE OF INTENT
Attorney Docket No. 13-0119	: TO ISSUE CERTIFICATE OF
Title: Hepatitis C Inhibitor	: CORRECTION
Compounds	:

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by five hundred and eighty-eight (588) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by five hundred eighty-eight (588) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery A. Fries

Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,585,845 B2

DATED : **September 8, 2009** **DRAFT**

INVENTOR(S) : Llinas-Brunet 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 xxx days

Delete the phrase "by xxx days" and insert – by 532 days--

Day : Thursday
Date: 6/17/2010

PALM INTRANET

Time: 12:20:23

PTA Calculations for Application: 10/850101

Application Filing Date:	05/20/2004	PTO Delay (PTO):	518
Issue Date of Patent:	09/08/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	588
PTO Delay Adjustment:	70		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
143	06/17/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	70		
133.5	08/19/2009	PTA 36 MONTHS			
133	09/08/2009	PATENT ISSUE DATE USED IN PTA CALCULATION	61		126
132	07/22/2009	EXPORT TO FINAL DATA CAPTURE			
131	07/18/2009	EMAIL NOTIFICATION			
130	07/16/2009	MAIL-PETITION DECISION - DISMISSED			
129	07/15/2009	PETITION DECISION - DISMISSED			
128	03/16/2009	SEQUENCE FORWARDED TO PUBS ON TAPE			
127	03/09/2009	PETITION ENTERED			
126	03/09/2009	ISSUE FEE PAYMENT VERIFIED			
125	03/09/2009	ISSUE FEE PAYMENT RECEIVED			
124	03/02/2009	EXPORT TO INITIAL DATA CAPTURE			
123	02/26/2009	MAIL NOTICE OF ALLOWANCE			
122	02/23/2009	ISSUE REVISION COMPLETED			
121	02/23/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
120	02/17/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
119	02/17/2009	DOCUMENT VERIFICATION			
118	02/13/2009	NOTICE OF ALLOWABILITY			
117	12/12/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
116	12/12/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		0	114
115	01/10/2009	DATE FORWARDED TO EXAMINER			
114	12/12/2008	RESPONSE AFTER NON-FINAL ACTION			

113	12/12/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
112	09/22/2008	MAIL NON-FINAL REJECTION			
111	09/18/2008	NON-FINAL REJECTION			
110	08/19/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
108	08/19/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
107	09/12/2008	DATE FORWARDED TO EXAMINER			
106	08/19/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
105	09/12/2008	DISPOSAL FOR A RCE / CPA / R129			
104	08/19/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
103	08/19/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
102	06/06/2008	SEQUENCE FORWARDED TO PUBS ON TAPE			
101	05/26/2008	EXPORT TO INITIAL DATA CAPTURE			
100	05/22/2008	MAIL NOTICE OF ALLOWANCE			
99	05/21/2008	ISSUE REVISION COMPLETED			
98	05/21/2008	DOCUMENT VERIFICATION			
97	05/21/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
96	05/12/2008	NOTICE OF ALLOWABILITY			
90	04/07/2008	DATE FORWARDED TO EXAMINER			
89	02/25/2008	RESPONSE AFTER NON-FINAL ACTION			
88	12/17/2007	MAIL NON-FINAL REJECTION			
87	12/14/2007	NON-FINAL REJECTION			
86	10/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
85	12/06/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
84	12/06/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
83	12/06/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
82	11/01/2007	DATE FORWARDED TO EXAMINER			
81	10/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
80	10/31/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			

79	11/01/2007	DATE FORWARDED TO EXAMINER			
78	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
77	11/01/2007	DISPOSAL FOR A RCE / CPA / R129			
76	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
75	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
74	09/25/2007	EXPORT TO INITIAL DATA CAPTURE			
73	09/19/2007	MAIL NOTICE OF ALLOWANCE			
72	08/08/2007	ISSUE REVISION COMPLETED			
71	08/08/2007	DOCUMENT VERIFICATION			
70	08/08/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
69	08/08/2007	NOTICE OF ALLOWABILITY			
68	08/08/2007	DATE FORWARDED TO EXAMINER			
67	07/30/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
66	08/08/2007	DATE FORWARDED TO EXAMINER			
65	07/30/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
64	08/08/2007	DISPOSAL FOR A RCE / CPA / R129			
63	07/31/2007	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE - WITH ASSIGNED PATENT NO.			
62	07/31/2007	WITHDRAWAL PATENT CASE FROM ISSUE			
61	07/30/2007	PETITION ENTERED			
60	07/30/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
59	07/25/2007	ISSUE NOTIFICATION MAILED			
58	08/14/2007	PATENT ISSUE DATE USED IN PTA CALCULATION			
57	07/09/2007	FINISHED INITIAL DATA CAPTURE			
55	07/09/2007	FINISHED INITIAL DATA CAPTURE			
54	07/10/2007	EXPORT TO FINAL DATA CAPTURE			
53	07/09/2007	DISPATCH TO FDC			
52	06/26/2007	APPLICATION IS CONSIDERED READY FOR ISSUE			
51	06/26/2007	WORKFLOW - QUERY REQUEST - FINISH			
50	06/21/2007	TC RETURN TO PUBS			
49	06/21/2007	ISSUE FEE PAYMENT VERIFIED			
48	06/21/2007	ISSUE FEE PAYMENT RECEIVED			

47	06/21/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
46	06/19/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
45	05/25/2007	PUBS CASE REMAND TO TC			
44	06/07/2007	WORKFLOW - QUERY REQUEST - BEGIN			
43	06/01/2007	MAIL EXAMINER'S AMENDMENT			
42	05/31/2007	EXAMINER'S AMENDMENT COMMUNICATION			
41	05/11/2007	WORKFLOW - QUERY REQUEST - FINISH			
40	04/19/2007	PUBS CASE REMAND TO TC			
39	05/02/2007	MAIL EXAMINER'S AMENDMENT			
38	05/02/2007	EXAMINER'S AMENDMENT COMMUNICATION			
37	04/24/2007	WORKFLOW - QUERY REQUEST - BEGIN			
36	04/10/2007	SEQUENCE FORWARDED TO PUBS ON TAPE			
35	04/02/2007	EXPORT TO INITIAL DATA CAPTURE			
34	03/30/2007	MAIL NOTICE OF ALLOWANCE			
33	03/29/2007	ISSUE REVISION COMPLETED			
32	03/29/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
31	03/29/2007	NOTICE OF ALLOWABILITY			
30	09/13/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	01/19/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
28	02/27/2007	CASE DOCKETED TO EXAMINER IN GAU			
27	01/31/2007	DATE FORWARDED TO EXAMINER			
26	01/19/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
25	01/19/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
20.7	01/19/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
20	01/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	10/20/2006	MAIL RESTRICTION REQUIREMENT	457		-1
18	10/16/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
17	06/08/2006	CASE DOCKETED TO EXAMINER IN GAU			
16	05/23/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	09/13/2004	REFERENCE CAPTURE ON IDS			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

14.7	09/13/2004	FILED			
14	09/13/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	10/05/2004	APPLICATION RETURN FROM OIPE			
12	10/05/2004	APPLICATION RETURN TO OIPE			
11	10/04/2004	APPLICATION DISPATCHED FROM OIPE			
10	10/05/2004	APPLICATION IS NOW COMPLETE			
9	09/10/2004	ADDITIONAL APPLICATION FILING FEES			
8	09/10/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	07/12/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	06/25/2004	CLEARED BY OIPE CSR			
5	06/25/2004	CASE CLASSIFIED BY OIPE			
4	06/03/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
3	05/30/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/20/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	05/20/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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CRYSTAL CITY STATION
ARLINGTON VA 22215

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OFFICE OF PETITIONS

In re Application of	:	
LANCASTER	:	DECISION
Application No. 10/850,120	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 24159.01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 15, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 13, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 14, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment and Response; (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 mailed October 13, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

The application matter is being forwarded to Technology Center Art Unit 3725.

Denise Pothier
Petitions Examiner
Office of Petitions

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TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Application of :
Michel Gilbert, et al. :
Application No. 10/850,125 : NOTICE
Filed: May 19, 2004 :
Attorney Docket No. 019633-000125US

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 forwarded to Technology Center 1652 for examination in due course.

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

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COOLEY GODWARD KRONISH LLP
Attn: Patent Group
Suite 1100
777-6th Street, NW
Washington, DC 20001

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OFFICE OF PETITIONS

In re Application of	:	
Frederick H. Carter, et al.	:	
Application No. 10/850,132	:	DECISION ON PETITION
Filed: May 19, 2004	:	TO WITHDRAW
Attorney Docket No. 021756-013300US	:	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 1, 2010.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to Cooley Godward Kronish LLP has been revoked by the assignee of the patent application on April 13, 2010. 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 Johnson at 571-272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

cc: **TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE**
Two Embarcadero Center
8th Floor
San Francisco, CA 94111-3834

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JJGJR.: 12-04

Paper No: __

BRENT T. WINDER
JONES WALDO HOLBROOK & MCDONOUGH
SUITE 1500
170 SOUTH MAIN STREET
SALT LAKE CITY UT 84101-1644

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OFFICE OF PETITIONS

In re Application of
Lowe, et al. :
Application No. 10/850,139 : DECISION ON PETITION
Filing Date: 20 May, 2004
Attorney Docket No. 15402.0008 :

This is a decision on the petition filed on 20 September, 2004, and considered under 37 C.F.R. §1.53, to obtain a filing date of 20 May, 2004, for Figures 9A and 9B, as describe in the specification of the application.

The petition is **GRANTED**.

BACKGROUND

This nonprovisional application was deposited on 20 May, 2004.

On 20 July, 2004, the Office mailed a "Notice to File Corrected Application Papers," (the 20 July Notice) and indicated, *inter alia*, that "Figure(s) 9A and 9B as described in the specification" appeared to be missing on deposit of the application.

The 20 July Notice further informed Petitioner that, should he contend that the missing figure was deposited with the rest of the application at the time of filing, he could petition and make a showing to that effect, or he could accept the application as filed, or could submit the missing figure and accept the date of that submission as the date of filing.

The petition filed on 20 September, 2004, states that it is accompanied, *inter alia*, by a date-

stamped ("052004") receipt card itemizing the contents of the application received by the Office and copies of Figures 9A and 9B as described in the specification.

ANALYSIS

A review of the record reveals that:

- the instant application was deposited with the Office on 20 May, 2004; and
- the receipt card (see: MPEP §503[1]) is date stamped and provides, *inter alia*:

* * *

26 Sheets of Pages of Drawings (Informal)

* * *

The record further discloses that the drawing sheets that the Office acknowledges receiving are

---

[1] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

sequentially numbered, e.g., "1/19," "2/19" . . . "19/19," and there are no duplicate sheets/figures.

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that the Figure(s) 9A and 9B as described in the specification were submitted on 20 May, 2004, and subsequently was misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.53 is **granted**; the petition fee is waived and credited to Deposit Account 50-1723; and the Notice mailed on 20 July, 2004, hereby is withdrawn as to Figure(s) 9A and 9B as described in the specification.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 20 May, 2004, for the entire application and in particular for Figure(s) 9A and 9B as described in the specification using:

- pages 1 - 26 (Specification, Claims, Abstract, and 18 sheets of drawings (Fig(s). 1 - 8B and 10 - 23D) deposited on 20 May, 2004; and
- Fig(s). 9A and 9B as described in the specification, deposited on 20 September, 2004;
- with direction to OIPE to correct Office records to reflect that 26 pages of specification (description, claims and abstract) and (as Petitioner alleges) "19 pages of drawings" were present on filing on 20 May, 2004, and forward to Petitioner a corrected filing receipt setting forth a filing date of 20 May, 2004, reflecting therein that 26 pages of specification (description, claims and abstract) and (as Petitioner alleges) "19 pages of drawings" were present on filing.

Thereafter, the application will be considered by the examiner in due course.

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

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

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TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY UT 84110

In re Application of	:
Frits Jacobus Fallaux et al	:
Serial No.: 10/850,140	: PETITION TO MAKE SPECIAL
Filed: May 20, 2004	:
Attorney Docket No.: 2578-3833.10US	:

This is in response to applicants' petition filed May 20, 2004, 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. Therefor the petition is **GRANTED**.

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission to the general Office facsimile number.

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

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2100 LOGIC DR
SAN JOSE, CA 95124

Mail Date: 05/10/2010

Applicant	: Haibing Ma	: DECISION ON REQUEST FOR
Patent Number	: 7620942	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/850,176	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1581** 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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FULLIN LEGAL SERVICES LLC
711 N. Milwaukee Avenue
Libertyville, IL 60048

In re application of
Donald DeBello
Application No. 10/850,193 :
Filed: May 20, 2004 :
For: SEAT PLATE FOR A POOL :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on March 30, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), the reason "I have accepted a position as in-house counsel at Circle Group Holdings, Inc. Further representation in this matter would be inappropriate", is not appropriate since it is not clear what makes representing the client inappropriate, furthermore it is not clear that the client initiated the transfer, or that the client knowingly or freely assents to the transfer to new counsel. A proper reason for withdrawal is enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided. If accepting the above-noted position qualifies as a proper reason for withdrawal, an explanation of which portion of 37 CFR 10.40 it would apply to is required.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6611

SNM/pav: 06/02/05

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OFFICE OF PETITIONS

In re Application of	:	
Peter Irma August BARRI et al.	:	
Application No. 10/850,219	:	DECISION ON PETITION
Filed: May 20, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. RAL920000112US3	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed October 11, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED.**

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information 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 1.72(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 MPEP Section 201.11, Rev. 2, May 2004, Reference to Prior Application. The amendment filed October 11, 2007 fails to state which application is a continuation-in-part of Application No. 09/384,744, filed August 27, 1999.

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 or an Application Data Sheet (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)) which state the relationship of the prior-filed application to this application are required.

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

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In re Application of	:	
Peter Irma August BARRI et al.	:	
Application No. 10/850,219	:	DECISION DISMISSING PETITIONS
Filed: May 20, 2004	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. RAL920000112US3	:	

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed December 5, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional applications set forth in the concurrently filed 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 December 5, 2007 fails to properly claim priority to application serial no. 09/384,744 because the instant application was filed May 20, 2004 and application serial no. 09/384,744 issued as a patent on October 1, 2002, therefore the instant application cannot be a continuation-in-part of application serial no. 09/384,744 as there is no copendency between the applications.

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:

By mail: Mail Stop PETITIONS
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401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
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Any questions concerning this matter may be directed to David Bucci at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

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1 DNA WAY
SOUTH SAN FRANCISCO CA 94080

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OFFICE OF PETITIONS

In re Application of	:	
Olivero, et al.	:	DECISION ON PETITION
Application No. 10/850,231	:	
Filed: May 19, 2004	:	
Attorney Docket No. P2037R1	:	

This is a decision on the "PETITION TO WITHDRAW TERMINAL DISCLAIMER UNDER 37 C.F.R. §1.182", filed May 1, 2007.

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

The matter is being forwarded to Group Art Unit 1625. The examiner is directed to withdraw the terminal disclaimer over US Patent No. 6,472,393.

Receipt of the $400 petition fee is acknowledged.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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MATTINGLY, STANGER, MALUR &
BRUNDIDGE, P.C.
1800 Diagonal Road
Suite 370
Alexandria, VA 22314

MAILED

MAR 23 2006

Technology Center 2100

In re Application of:
T. IWAMURA, et al.
Application No. 10/850,251
Filed: May 21, 2004
For: COMPUTER SYSTEM CAPABLE OF FAST FAILOVER UPON FAILURE

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed on 05 August 2005 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **GRANTED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
>
> (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
>
> (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
>
> (D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
>
> (E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission of 05 August 2005 meets all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. § 1309.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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PRATT & WHITNEY
400 MAIN STREET
MAIL STOP: 132-13
EAST HARTFORD, CT 06108

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JUL 23 2007

OFFICE OF PETITIONS

In re Application of	:	
Jaime A. Arbona et al	:	
Application No. 10/850,253	:	ON PETITION
Filed: May 20, 2004	:	
Attorney Docket No. 3309P-0159 (EH-11021)	:	

This is a decision on the petition filed February 26, 2007 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication fee in a timely manner in reply to the Notice of Allowance mailed November 7, 2006, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on February 8, 2007.

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

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAR 17 2008

OFFICE OF PETITIONS

In re Application of
ZUCHERMAN, James F. et al.
Application No. 10/850,267
Filed: May 20, 2004
Attorney Docket No. **5910-196**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 14, 2007.

The request is **moot** because a revocation of power of attorney has been previously filed.

A review of the file record indicates that the power of attorney to TOWNSEND AND TOWNSEND AND CREW, LLP has been revoked by the assignee of the patent application on December 20, 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 Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **COATS & BENNETT/MEDTRONICS**
1400 CRESCENT GREEN
SUITE 300
CARY NC 27518

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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MICHAEL BEST & FRIEDRICH LLP
100 EAST WISCONSIN AVE
SUITE 3300
MILWAUKEE, WI 53202-4108

Mail Date: 04/21/2010

Applicant	: Donald D. Baker	: DECISION ON REQUEST FOR
Patent Number	: 7616090	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,276	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **680** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5-30-06

TO SPE OF : ART UNIT 2111 10/850,309

SUBJECT : Request for Certificate of Correction on Patent No.: 6941403

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:

It appears that the office lost or misplaced the Formal drawings applicant submitted 19 MAY 2004

MARK H. RINEHART
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2111

Art Unit

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Jonathan P. Osha
Osha Novak & May L.L.P.
Suite 2800
1221 McKinney St.
Houston, TX 77010

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JUN 15 2006

OFFICE OF PETITIONS

In re Application of Jikumaru :
Application No. 10/850,311 : Decision on Petition
Filing Date: May 20, 2004 :
Attorney Docket No. 04995/147001 :

This is a decision on the petition under 37 CFR 1.181, filed April 20, 2006, to withdraw the holding of abandonment.

The petition is **granted.**

Facts:

A Notice to File Corrected Application Papers was mailed July 21, 2004.

A reply was filed August 12, 2004.

A Notice of Incomplete Reply was mailed September 2, 2004.

On or before March 15, 2006, a review of the file failed to indicate the presence of a reply to the Notice mailed September 2, 2004. As a result, a Notice of Abandonment was mailed March 15, 2006.

Petitioner contends a reply was timely filed on September 21, 2004, in response to the September 2, 2004 Notice.

Discussion:

Petitioner has supplied a showing in compliance with 37 CFR 1.8(b) demonstrating a reply was timely submitted.

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

The Office of Initial Patent Examination will be informed of this decision and will take steps to prepare the application for examination in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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GENENTECH, INC.
1 DNA WAY
SOUTH SAN FRANCISCO, CA 94080

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JUN 29 2007

OFFICE OF PETITIONS

In re Application of Rawson et al. :
Application No. 10/850,312 :
Filing Date: May 19, 2004 :
Attorney Docket No. P2039R1 :

Decision on Petition

This is a decision on the petition under 37 C.F.R. § 1.182, filed February 28, 2007, which requests that the terminal disclaimer filed on December 9, 2005.

The petition is **granted.**

Facts:

A non-final Office action was mailed November 7, 2005. The non-final Office action included a non-statutory double patenting rejection.

A reply to the Office action was filed December 9, 2005. The reply included a terminal disclaimer filed in order to overcome the double patenting rejection.

The Office accepted and entered the terminal disclaimer.

After further prosecution, a Notice of Allowance and Notice of Allowability were mailed on November 29, 2006. The Notice of Allowability was accompanied by the examiner's reasons for allowance. The reasons for allowance included the following language,

> A terminal disclaimer was filed and accepted in response to the ODP rejection in the office action dated 11/7/2005. The amendment to the claims deleting H from Pr1 removes the possibility of an ODP rejection and a terminal disclaimer is not needed.
>
> If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent....

The instant petition and the issue fee were filed February 28, 2007.

Discussion:

After consideration of all the facts, the Office has determined the requested relief should be granted.

The terminal disclaimer filed December 9, 2005, is withdrawn.

The Office of Publications will be informed of the instant decision and the application will be issued as a patent in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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NXP INTELLECTUAL PROPERTY DEPARTMENT
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE, CA 95131

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OCT 08 2008
OFFICE OF PETITIONS

In re Application of	:
Yerow Khai Chang, et al.	:
Application No. 10/850,327	: DECISION ON PETITION
Filed: May 19, 2004	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. NL03 0567 US	:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed July 18, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to a prior-filed provisional application.

The petition is **DISMISSED.**

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

This pending nonprovisional application was filed on May 19, 2004, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/471,702, which was filed on May 19, 2003, and for which priority is claimed. However, the provisional application that is cited does not name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application

in the manner provided by the first paragraph of 35 U.S.C. 112. See 37 CFR 1.78(a)(4) and/or MPEP 201.11 IV.

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

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

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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SAN JOSE, CA 95131

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JAN 1 5 2009

OFFICE OF PETITIONS

In re Application of	:	
Yeow Khai Chang, et al.	:	
Application No. 10/850,327	:	DECISION ON PETITION
Filed: May 19, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. NL03 0567 US	:	

This is a decision on the renewed petition, filed October 22, 2008, under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i)

to the prior-filed application, unless previously submitted;

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

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

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

must have been filed within twelve months of the filing date of the prior-filed provisional application.

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

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

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

Since no further petition fee is required on a renewed petition, the $1,410 fee submitted with the present petition is being refunded to counsel's deposit account.

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

The application is being forwarded to Technology Center AU 2443 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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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
10/850,327	05/19/2004	2443	1070	NL03 0567 US	6	2

CONFIRMATION NO. 7818

CORRECTED FILING RECEIPT

OC000000034003145

65913
NXP, B.V.
NXP INTELLECTUAL PROPERTY DEPARTMENT
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE, CA 95131

Date Mailed: 01/12/2009

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)

Yeow Khai Chang, Singapore, SINGAPORE;
Jerome Tjia, Singapore, SINGAPORE;
Weng Fei Moo, Singapore, SINGAPORE;

Assignment For Published Patent Application

Koninklijke Philips Electronics N.V.

Power of Attorney:

Jack Haken--26902
Edward Blocker--30245
Michael Marion--32266
Michael Ure--33089
Kevin Fortin--35140
Christopher Horgan--40394
Peter Zawilski--43305

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/471,704 05/19/2003

Foreign Applications

If Required, Foreign Filing License Granted: 07/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/850,327**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

USB HOST PROTOCOL

Preliminary Class

709

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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Welsh & Katz, Ltd.
Eric D. Cohen
22nd Floor
120 South Riverside Plaza
Chicago IL 60606

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OCT 2 9 2004

OFFICE OF PETITIONS

In re Application of	:	
Li et al.	:	
Application No. 10/850,333	:	DECISION GRANTING PETITION
Filed: May 20, 2004	:	
Attorney Docket No. 92181	:	

This is a decision on the petition filed September 24, 2004, requesting that the above-identified application be accorded a filing date of May 20, 2004.

On May 20, 2004, applicant deposited the above-identified application. On July 21, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," stating that the application had not been accorded a filing date as the application was deposited without drawings and that the filing date would be the date of receipt of the items.

In response, on September 24, 2004, applicant filed the present petition and a copy of applicant's postcard receipt acknowledging receipt of six sheets of drawings on May 20, 2004. Additionally, applicant submitted a copy of six sheets of drawings with the present petition.

Upon review of the record, the six sheets of drawings, deposited on May 20, 2004, have not been located among the application papers. However, the evidence is convincing that the application papers deposited on May 20, 2004, included six drawing sheets, which were subsequently misplaced in the United States Patent and Trademark Office. Therefore, the application, including six drawing sheets, was complete on filing and will be granted a filing date of May 20, 2004.

Accordingly, the petition is granted.

The "Notice of Incomplete Nonprovisional Application," mailed July 21, 2004, was sent in error and is hereby vacated. The $130.00 petition fee is unnecessary and will be credited to Deposit Account No. 23-0920.

The Office of Initial Patent Examination is directed to accord the application a filing date to May 20, 2004, using the six sheets of drawings submitted on petition. The Office records should indicate that six sheets of drawings were submitted on filing.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Weltz & Katz, LTD.
120 South Riverside Plaza
22nd Floor
Chicago, IL 60606

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APR 15 2008

OFFICE OF PETITIONS

In re Application of	:	
Wen-Jin Li et al.	:	
Application No. 10/850,333	:	DECISION ON PETITION
Filed: May 20, 2004	:	TO WITHDRAW
Attorney Docket No. TAIW 870	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 20, 2007.

The request is **NOT APPROVED** because it is moot.

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

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

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

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Rabin & Berdo, PC**
1101 14th Street, NW
Suite 500
Washington, DC 20005

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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Vista IP Law Group LLP
2040 MAIN STREET, Suite 710
IRVINE, CA 92614

Mail Date: 04/21/2010

Applicant	: N. Parker Willis	: DECISION ON REQUEST FOR
Patent Number	: 7633502	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,357	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/19/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1610** 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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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Mail Date: 04/26/2010

Applicant	: Keith Kastella	: DECISION ON REQUEST FOR
Patent Number	: 7609382	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/850,394	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **653** 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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Katten Muchin Rosenman, LLP
c/o Patent Administrator
2900 K Street NW, Suite 200
Washinton, DC 20007-5118

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SEP 28 2009

OFFICE OF PETITIONS

In re Application of	:	
Ian M. Penn et al.	:	
Application No. 10/850,397	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 213202.00507	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 26, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, December 29, 2008, which set a shortened statutory period for reply of three (3) months. A three month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on June 30, 2009. A Notice of Abandonment was mailed on July 30, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal, with the required fee of $540, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the Notice of Appeal is accepted as being unintentionally delayed.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

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

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 referred to Technology Center AU 3773 for processing of the response and any action that is required by the Examiner in the normal course of business.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: Richard P. Bauer
Patent Administrator
Katten Muchin Rosenman, LLP
East Lobby, Suite 700
Washington, DC 20007

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MACPHERSON KWOK CHEN & HEID LLP
2033 GATEWAY PLACE
SUITE 400
SAN JOSE CA 95110

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APR 1 4 2008

OFFICE OF PETITIONS

In re Application of	:	
Lihu Chiu	:	
Application No. 10/850420	:	
Filing or 371(c) Date: 05/20/2004	:	
Attorney Docket Number: M-15140-5D-US	:	ON PETITION

This is a decision on the "Petition to Withdraw Abandonment, filed May 5, 2006. The petition is properly treated under 37 C.F.R. § 1.181(a). The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice Regarding Drawings ("Notice"), mailed December 19, 2005. The Notice set a non-extendable two (2) month period for reply. No response having been received, the application became abandoned on February 20, 2006. A Notice of Abandonment was mailed April 6, 2006.

With the present petition, Applicant has demonstrated non-receipt of the Notice by a preponderance of the evidence.

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

No petition fee has been charged and none is due.

The application will be referred to Publishing Division for re-mailing of the Notice and re-setting the period for reply. A copy of the Notice is also enclosed herewith.

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

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Notice Regarding Drawings

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATIO NUMBER	FILING/RECEIPT DATE	FIRST NAMES APPLICANT	ATTORNEY DOCKET NUMBER
10/850420	05/20/2004	CHIU, LIHU	M-15140-5D-US

Examiner / HAMDAN, WASSEEM
Art Unit 2854 Paper Number

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

Date Mailed: 12/16/2005

Notice Regarding Drawings

Corrected drawings for the above-identified application, received in the USPTO on 05/20/2004, are still not acceptable for the reason(s) identified on the attached PTO-948. Applicant is given one opportunity to correct the informalities within a two-month time period from the mailing date of this Notice. **THIS TIME PERIOD IS NOT EXTENDABLE UNDER EITHER 37 CFR 1.136(a) OR 1.136(b). Failure to take corrective action within the set period will result in abandonment of the application.**

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

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

Tyrone Johnson
Office of Patent Publication,
Publishing Division
703-305-0333 #130

Form PTO-948 (Rev. 06/03)
Application No. 10/850420

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

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 1/24/05 are:

A. ____ approved by the Draftsperson under 37 CFR 1.84 or 1.152.

B. ✓ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. Corrected drawings are required.

1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink or Color (3 sets required).
___ Color drawings are not acceptable until petition is granted. Fig(s)____
___ Pencil and non black ink not permitted. Fig(s)____

2. PHOTOGRAPHS. 37 CFR 1.84(b)
___ One (1) full-tone set is required. Fig(s)____
___ Photographs may not be mounted. 37 CFR 1.84(e)
___ Photographs must meet paper size requirements of 37 CFR 1.84(f). Fig(s)____
___ Poor quality (half-tone). Fig(s)____

3. TYPE OF PAPER. 37 CFR 1.84(e)
___ Paper not flexible, strong, white, and durable. Fig(s)____
___ Erasures, alterations, overwritings. interlineations, folds, copy machine marks not accepted. Fig(s)____

4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:
21.0 cm by 29.7 cm (DIN size A4) or
21.6 cm by 27.9 cm (8 1/2x 11 inches)
___ All drawing sheets not the same size. Sheet(s)____
___ Drawings sheets not an acceptable size. Fig(s)____

5. MARGINS. 37 CFR 1.84(g): Acceptable margins:
Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm
___ Margins not acceptable. Fig(s)____
____Top (T) ____ Left (L)
____Right (R) ____ Bottom (B)

6. VIEWS. 37 CFR 1.84(h)
REMINDER: Specification may require revision to correspond to drawing changes, e.g., if Fig. 1 is changed to Fig. 1A, Fig 1B and Fig. 1C, etc., the specification, at the Brief Description of the Drawings, must likewise be changed.
___Views not labeled separately or properly. Fig(s)____

7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3)
____ Sectional designation should be noted with Arabic or Roman numbers. Fig(s)____

8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)
___ Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s)____

9. SCALE. 37 CFR 1.84(k)
___ Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction. Fig(s)____

10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(l)
___ Lines, numbers & letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s)____

11. SHADING. 37 CFR 1.84(m)
___ Solid black areas pale. Fig(s)____
___ Solid black shading not permitted. Fig(s)____

12. NUMBERS, LETTERS, & REFERENCE CHARACTERS. 37 CFR 1.84(p)
✓ Numbers and reference characters not plain and legible. Fig(s) 6,7,11,13,20
✓ Figure legends are poor. Fig(s) 16
___ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s)____
___ English alphabet not used. 37 CFR 1.84(p)(2) Fig(s)____
___ Numbers, letters and reference characters must be at least 32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3). Fig(s)____

13. LEAD LINES. 37 CFR 1.84(q)
___ Lead lines missing. Fig(s)____

14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(t)
___ Sheets not numbered consecutively, and in Arabic numbers beginning with number 1. Sheet(s)____

15. NUMBERING OF VIEWS. 37 CFR 1.84(u)
___ Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s)____

16. DESIGN DRAWINGS. 37 CFR 1.152
___ Surface shading shown not appropriate. Fig(s)____
___ Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Fig(s)____

COMMENTS:

Reviewer ____ Date 12/14/05

If you have questions, call (703) 305-8404. Attachment to Paper No. ____

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

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NOV 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Jorg Liebscher et al.	:	
Application No. 10/850,433	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO WITHDRAW
Attorney Docket No. 2003P18386	:	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 28, 2007.

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

A review of the file record indicates that the power of attorney to Morrison & Foerster LLP has been revoked by the assignee of the patent application on September 19, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Lerner Greenberg Stemer LLP**
P O Box 2480
Hollywood, FL 33022-2480

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OFFICE OF PETITIONS

PRATT & WHITNEY CANADA CORP.
1000 MARIE VICTORIN (01BE5)
LONGUEUIL J4G 1A1 CA CANADA

In re Patent No. 7,487,029	:	
Application No. 10/850,436	:	
Filed: May 21, 2004	:	ON PETITION
Issued: February 3, 2009	:	
Attorney Docket No. 2993-536US	:	

This is a decision on the petition filed February 24, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to add the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

The address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Matthew J. Marquardt
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

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

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

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OFFICE OF PETITIONS

In re Application of :
KOSTER, et al. :
Application No. 10/850,444 :
Filed: May 21, 2004 :
Attorney Docket No. **2001P16605** :

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 28, 2007.

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

A review of the file record indicates that the power of attorney to **MORRISON & FOERSTER, LLP** has been revoked by the assignee of the patent application on August 16, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **LERNER GREENBERG STEMER LLP**
P O BOX 2480
HOLLYWOOD FL 33022-2480

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LERNER GREENBERG STEMER LLP
P.O. BOX 2480
HOLLYWOOD FL 33022-2480

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FEB 26 2008

In re Application of	:	
Kay Koster et al	:	
Application No. 10/850,444	:	DECISION GRANTING PETITION
Filed: May 21, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2001P16605	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 25, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 31, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2838 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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DICKSTEIN SHAPIRO LLP
1633 Broadway
NEW YORK, NY 10019

Mail Date: 04/21/2010

Applicant	: Burkhard Becker	: DECISION ON REQUEST FOR
Patent Number	: 7636374	: RECALCULATION of PATENT
Issue Date	: 12/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,484	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1134** 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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ALEXANDRIA, VA 22313-1450
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AUG 20 2004

In re Application of	:	
Gregorio Lim Tan	:	
Serial No. 10/850,485	:	DECISION ON PETITION
Filed: May 19, 2004	:	TO MAKE SPECIAL
For: PRE-CUT PLASTIC BAG ROLL,	:	
METHOD AND APPARATUS FOR	:	
MAKING SAME	:	

Applicant's petition, filed May 20, 2004, seeks to have this application made special pursuant to the Accelerated Examination Program. The petition is GRANTED.

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

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

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Belasco, Jacobs & Townsley, LLP
Howard Hughes Center
6100 Center Drive, Suite 630
Los Angeles, CA 90045

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FLIESLER MEYER, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO, CA 94111

In re Patent No. 6,995,615	: DECISION REGARDING PTA and
Issued: February 7, 2006	: NOTICE OF INTENT TO ISSUE
Application No. 10/850,504	: CERTIFICATE OF CORRECTION
Filed: May 20, 2004	:
Atty. Dkt. No.: ELAN-01119US0	:

This decision is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)," filed April 10, 2006 (certificate of mailing date April 6, 2006).

The application for patent term adjustment (PTA) under 37 CFR 1.705(d) is hereby **GRANTED**.

The above-identified application matured into U.S. Patent No. 6,995,615 on February 7, 2006. The patent issued with a PTA of zero days. The instant application for PTA was timely filed April 10, 2006. Patentee argues that the adjustment of 51 days was improperly reduced 104 days in connection with a "MISCELLANEOUS INCOMING LETTER" filed October 27, 2005.

Review of the application history reveals that at the time of issuance, an adjustment 51 days could be attributed to the Office in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(2).

The adjustment of 51 days was improperly reduced 104 days in connection with a "COMMUNICATION REGARDING SUBSTITUTE DECLARATION," filed October 27, 2005.

Patentee's first opportunity to address the matter regarding the declaration was subsequent to the mailing of the Notice of Allowance. Thus, in this instance, the communication filed October 27, 2005 is not deemed a failure by applicant to engage in reasonable efforts to conclude prosecution (or processing).

Therefore, at the time of issuance, the patent was entitled to an adjustment of 51 days, as argued by patentee.

Receipt is hereby acknowledged of the required application fee of $200.00.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 51 days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A Fries

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

Enclosure: Draft Certificate of Correction

Day : Monday
Date: 5/22/2006

PALM INTRANET

Time: 11:25:13

PTA Calculations for Application: 10/850504			
Application Filing Date:	05/20/2004	PTO Delay (PTO):	51
Issue Date of Patent:	02/07/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	104
Post-Issue Petitions:	0	Total PTA (days):	51
PTO Delay Adjustment:	104		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
30	05/22/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	104		
26	02/07/2006	PATENT ISSUE DATE USED IN PTA CALCULATION			
25	12/30/2005	EXPORT TO FINAL DATA CAPTURE			
24	12/27/2005	FINISHED INITIAL DATA CAPTURE			
23	12/29/2005	DISPATCH TO FDC			
22	12/14/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
21	12/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	10/27/2005	MISCELLANEOUS INCOMING LETTER		104	
19	10/27/2005	ISSUE FEE PAYMENT VERIFIED			
18	10/27/2005	ISSUE FEE PAYMENT RECEIVED			
17	09/19/2005	EXPORT TO INITIAL DATA CAPTURE			
16	09/09/2005	MAIL NOTICE OF ALLOWANCE	51		-1
15	09/07/2005	ISSUE REVISION COMPLETED			
14	09/07/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
13	09/06/2005	NOTICE OF ALLOWABILITY			
12	08/30/2005	CASE DOCKETED TO EXAMINER IN GAU			
11	08/12/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	08/12/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	05/20/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	07/21/2004	APPLICATION RETURN FROM OIPE			
7	07/21/2004	APPLICATION RETURN TO OIPE			
6	07/21/2004	APPLICATION DISPATCHED FROM OIPE			

5	07/21/2004	APPLICATION IS NOW COMPLETE			
4	06/24/2004	CLEARED BY OIPE CSR			
3	06/24/2004	CASE CLASSIFIED BY L&R			
2	05/30/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/20/2004	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

Back to PALM | ASSIGNMENT | OASIS | Home page

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,995,615 B2
DATED	:	February 7, 2006
INVENTOR(S)	:	Zhao

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 0 days

Delete the phrase "by 0 days" and insert – by 51 days--

OIPE IAP84
APR 10 2006
PATENT & TRADEMARK OFFICE

DKC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application		PATENT APPLICATION
Inventor(s):	Yang Zhao	
Patent. No.:	6,995,615	Art Unit: 2817
Issued:	February 7, 2006	Examiner: Choe, Henry
Appln. No.:	10/850,504	Atty. Docket No.: ELAN-01119US0
Filing Date:	May 20, 2004	
Confirm. No.:	8805	**Customer No. 23910**
Title: CURRENT-MODE PREAMPLIFIERS		

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: **Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**, on the date shown below.

_____ (Name)
Mathew Otts
Signature Date: April 7, 2006

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)

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

Sir:

Applicant hereby requests reconsideration of the revised patent term adjustment indicated in the Issue Notification mailed January 18, 2006.

A check for the application fee pursuant to 37 C.F.R. §§ 1.18(e) is enclosed as follows:

_X_ Application fee for patent term adjustment due to examination delay under §1.705. $200.00.

____ Request for reinstatement of all or part of the patent term reduced under §1.704(b). $400.00.

Statement of Facts

In accordance with § 1.705(b)(2), the following facts are set forth below:

1. The correct patent term adjustment should be 51 days and the basis for the adjustment is § 1.702(a).

2. The relevant dates under § 1.703(a)-(e) for which an adjustment is sought are as follows:

04/11/2006 CNEGA2 00000018 6995615
01 FC:1455 200.00 OP

In addition to the above statement of facts:

05/20/2004 Applicant filed the subject application along with a Declaration signed by the inventor and an Application Data Sheet providing the inventor's residence.

09/09/2005 The Notice of Allowance mailed 09/09/05 indicated that the Declaration filed 05/20/2004 was defective for failing to identify the residence of the inventor.

10/25/2005 Applicant filed a Communication Regarding Substitute Declaration asserting that a substitute Declaration was not required pursuant to 37 C.F.R. § 1.63(c), as the information was supplied in an Application Data Sheet in accordance with 37 C.F.R. § 1.76.

__X__ The above referenced application/patent is not subject to a Terminal Disclaimer.

__X__ Under § 1.704, there were no circumstances during the prosecution of the above referenced application/patent constituting a failure to engage in reasonable efforts to conclude processing or examination of such application.

When calculating the Patent Term Adjustment, the USPTO stated that the "Miscellaneous Incoming Letter" sent 10/25/2005 (received 10/27/2005) resulted in a 104 day delay caused by Applicant. However, this "Miscellaneous Incoming Letter", as described above, was merely to explain that the USPTO was incorrect in requesting that a substitute declaration be filed. In other words, this Letter was filed by Applicant to respond to a mistake of the USPTO, and thus, Applicant was not at all responsible for any delay.

There was a 51 day delay due to the USPTO's failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. § 151 not later than 14 months after the date on which the application was filed.

As explained above, there was no Applicant delay to offset the 51 day delay of the USPTO.

Accordingly, the correct patent term adjustment is 51 days.

A check in the amount of $200.00 is enclosed to cover the required fee. The Commissioner is hereby authorized to charge any deficiencies or credit overpayment to Deposit Account No. 06-1325.

Respectfully submitted,

Date: April 7, 2006

By: [signature]
Jeffrey R. Kurin
Reg. No. 41,132

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800
Customer No. 23910

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. CYPHER
405 14TH STREET
SUITE 1607
OAKLAND CA 94612

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FEB 26 2009

OFFICE OF PETITIONS

In re Application of

Bak, et al.

Application No. 10/850,518

Filed: May 19, 2004

Attorney Docket No. SST/1386

DECISION ON PETITION

This is a decision on the "Petition to Accord Filing Date for Express Mail Correspondence Received by PTO (under 37 CFR 1.10(e)" filed January 27, 2009. The petition will be treated as a petition to withdraw the holding of abandonment.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on October 1, 2008, after it was believed that no response was received to the final Office action mailed June 30, 2008. 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 January 6, 2009, indicating that a reply to the notice was not received.

A review of the application file record revealed that a Request for Continued Examination was filed on December 30, 2008, with a request for an extension of time within the third month. Based on the aforementioned, it appears that the application was improperly held abandoned as a response was received prior to expiration of the statutory period for reply. The holding of abandonment is withdrawn, accordingly.

The application file is being forwarded Technology Center 3600, GAU 3633, for further processing, including processing of the response filed December 30, 2008.

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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LAWRENCE P. TRAPANI, ESQ.
PO BOX 555
MANLIUS NY 13104-0555

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JUN 2 4 2008

OFFICE OF PETITIONS

In re Application of	:	
Thomas Holtzman Williams	:	
Application No. 10/850,528	:	DECISION GRANTING PETITION
Filed: May 20, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 450-085A	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed June 24, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 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 should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2857 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment/declaration.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/19/08

TO SPE OF : ART UNIT 2857

SUBJECT : Request for Certificate of Correction for Appl. No.: 10850528 Patent No.: 7415367 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: _____

ELISEO RAMOS-FELICIANO
SUPERVISORY PATENT EXAMINER
SPE Art Unit 2857

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov
DW Nov-05

ERIC D. MIDDLEMAS
EASTMAN CHEMICAL COMPANY
P. O. BOX 511
KINGSPORT TN 37662-5075

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NOV 16 2005

OFFICE OF PETITIONS

In re Application of	:	
Haile et al.	:	
Application No. 10/850,548	:	DECISION ON PETITION
Filed: 20 May, 2004	:	
Atty Docket No. 71617	:	

This is a decision on the petition filed on 20 September, 2005, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

---

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

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

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

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

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

The application became abandoned on 9 September, 2005, for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on 8 June, 2005, which set a three (3) month statutory period for reply. The filing of the present petition precedes the mailing of Notice of Abandonment.

This application is being referred 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

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

HONEYWELL INTERNATIONAL INC.
PATENT SERVICES
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

Mail Date: 04/21/2010

Applicant	: John J. Poe	: DECISION ON REQUEST FOR
Patent Number	: 7587278	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,559	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/19/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **431** 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
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HONEYWELL INTERNATIONAL INC.
PATENT SERVICES
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

Mail Date: 05/18/2010

Applicant : John J. Poe
Patent Number : 7587278
Issue Date : 09/08/2009
Application No : 10/850,559
Filed : 05/19/2004

: 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 **491** 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

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OFFICE OF PETITIONS

Joel Wall, Esq.c/o Christian Anderson,
Verizon Corporate Services Group
600 Hidden Ridge HQE03H01
Irving, TX 75038

In re Application of	:	
Milliken, et al.	:	
Application No.: 10/850,563	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 03-4031	:	

This is in response to the petition under 37 CFR 1.137(b) filed April 14, 2006.

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

A "Notice to File Missing Parts of Nonprovisional Application" (the "Notice") was mailed by the Office on July 24, 2004, allowing a shortened period of reply of two-months from its mailing date. Extensions of time set for reply were available pursuant to 37 CFR 1.136(a). The Notice required payment of the filing fee, claim fee, and surcharge, and an executed oath or declaration. A reply was filed on September 22, 2004, but did not include a declaration signed by the second named inventor. A "Notice of Incomplete Reply" was mailed on October 6, 2004, requiring a declaration executed by the second named inventor. The period for response remained as set forth in the notice mailed July 24, 2004. No further response were received within the allowable period, and the application became abandoned on September 25, 2004. A Notice of Abandonment was mailed on March 31, 2006.

The above-identified application has been abandoned for an extended period of time. The 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 form 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 Patent and Trademark Office.

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

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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SAP / FINNEGAN, HENDERSON LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Application of	:	
Sindambiwe et al.	:	
Application No. 10/850,572	:	LETTER REGARDING PTA
Filed: May 19, 2004	:	
Attorney Docket No.	:	
09700.0068-00	:	

This letter is in response to the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT", filed on June 10, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. § 154(b) be reviewed for accuracy insomuch as the patent term adjustment should be reduced by 303 days from 1045 days to 742 days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED-IN-PART**.

The determination of PTA at the time of the mailing of the Notice of Allowance is six hundred sixty (660) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is 660 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 28, 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 one thousand forty-five (1045) days.

Applicants filed the instant "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT" on June 10, 2008.

On August 27, 2008, the issue and publication fees were paid. Accordingly, the subject letter was timely filed in accordance with 37 CFR 1.705(b).

The Office determined a patent term adjustment of one thousand forty-five (1045) days based on an adjustment for PTO delay of one thousand forty-five (1045) days, reduced by applicant delay of no (0) days.

Applicants request review of the patent term adjustment in that the patent term adjustment should be reduced by 303 days to 742 days.

Pursuant to 37 CFR 1.703(a)(1) a period of adjustment is entered for 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.

Upon review, applicants are correct. On May 19, 2004, the application was filed. On July 31, 2007, a non-final Office action was mailed. The non-final Office action mailed on July 31, 2007, was mailed fourteen months and seven hundred forty-two (742) days after the date the application was filed. Accordingly, the period of adjustment pursuant to § 1.703(a)(1) is 742 days.

Additionally, on May 19, 2008, an IDS was submitted, 82 days after the filing, on February 27, 2008, of an RCE and amendment.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

The IDS filed on May 19, 2008, did not include a statement in accordance with 37 CFR 1.704(d). Further, the IDS was not

expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8).

Accordingly, the IDS filed on May 19, 2008, is considered a failure to engage in reasonable efforts to conclude processing or examination of an application. The patent term adjustment will therefore be reduced additionally by 82 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **six hundred sixty (660) days** (742 days of PTO delay, reduced by 82 days of Applicant delay).

As the instant letter was submitted to advise the Office of an error in Applicant's favor, the $200.00 application fee under 37 CFR 1.705(b) was not required, and has not been charged.

The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Thursday
Date: 11/6/2008

PALM INTRANET

Time: 15:06:03

PTA Calculations for Application: 10/850572			
Application Filing Date:	05/19/2004	PTO Delay (PTO):	1045
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	660
PTO Delay Adjustment:	-385		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
53	11/06/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		82	
52	11/06/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		1045	
51	11/06/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	742		
41	05/28/2008	MAIL NOTICE OF ALLOWANCE			
40	05/27/2008	ISSUE REVISION COMPLETED			
39	05/27/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
38	05/27/2008	NOTICE OF ALLOWABILITY			
37	05/19/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	05/19/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	05/19/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	05/19/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	03/14/2008	DATE FORWARDED TO EXAMINER			
30	02/27/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
29	03/14/2008	DATE FORWARDED TO EXAMINER			
28	02/27/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
27	03/14/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
26	02/27/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
25	12/10/2007	MAIL FINAL REJECTION (PTOL - 326)			
24	12/08/2007	FINAL REJECTION			
23	09/26/2007	CORRESPONDENCE ADDRESS CHANGE			

22	09/26/2007	DATE FORWARDED TO EXAMINER			
21	09/20/2007	RESPONSE AFTER NON-FINAL ACTION			
20	07/31/2007	MAIL NON-FINAL REJECTION	1045		1
19	07/23/2007	NON-FINAL REJECTION			
18	08/16/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
17	06/25/2007	CASE DOCKETED TO EXAMINER IN GAU			
16	04/28/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	04/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
14.7	08/16/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	08/16/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	07/29/2005	CORRESPONDENCE ADDRESS CHANGE			
12	08/01/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
11	10/13/2004	APPLICATION RETURN FROM OIPE			
10	10/13/2004	APPLICATION RETURN TO OIPE			
9	10/13/2004	APPLICATION DISPATCHED FROM OIPE			
8	10/13/2004	APPLICATION IS NOW COMPLETE			
7	09/23/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
6	09/23/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	07/26/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	06/24/2004	CLEARED BY OIPE CSR			
3	06/24/2004	CASE CLASSIFIED BY OIPE			
2	06/01/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/19/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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THERESE HENDRICKS
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I STREET, N.W.
WASHINGTON DC 20005-3315

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FEB 04 2005

OFFICE OF PETITIONS

In re Application of	:	
Schmidt, et al.	:	
Application No. 10/850,573	:	ON PETITION
Filed: May 19, 2004	:	
Attorney Docket No. 08500.7248-01-000	:	

This is a decision on papers filed on September 27, 2004, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of May 19, 2004, including Figures 12, 15A and 15C, as described in the specification.

The application was submitted on May 19, 2004. However, on July 26, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice To File Missing Parts of Nonprovisional Application" (Notice) that stated the application had been accorded a filing date, and, among other things, that Figures 12, 15A and 15C described in the specification appear to have been omitted.

In response, on September 27, 2004, the instant petition and a twenty-two (22) sheets of drawings were submitted. Petitioner argues that Figures 12, 15A and 15C described in the specification were filed on May 19, 2004.

In support, petitioner has submitted a stamped postcard receipt that indicates the receipt in the USPTO on May 19, 2004 of "Figs 1-20 (19) sheets." Petitioner's argument has been considered, but is not persuasive. A review of the application file indicates 19 sheets of drawings, that begin with Figure no. 1 and end with Figure no. 20, were submitted on May 19, 2004. However, a review of the actual 19 sheets submitted on May 19, 2004, reveal that Figures 12, 15A and 15C were, in fact, omitted.

The Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application.

A review of the official file reveals Figures 12, 15A and 15C were omitted. Figures 12, 15A and 15C were not filed on May 19, 2004, since no such Figures are present in the file. 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.

It is noted that petitioner has submitted, with the instant petition, twenty-two (22) sheets of drawings that include Figures 12, 15A and 15C. It appears from petitioner's submission that the inclusion of the missing Figures increased the number of sheets of drawings from 19 sheets, to 22 sheets (three additional sheets that contain the three omitted Figures). Petitioner's submission of these twenty-two (22) sheets of drawings only confirm the omission of Figures 12, 15A and 15C from the original nineteen (19) sheets of drawings submitted on May 19, 2004.

Accordingly, the petition is dismissed.

However, it appears that applicants included an incorporation by reference statement to the parent application of the above-identified application. If applicable, applicant may wish to add the omitted figures through the incorporation by reference. However, no petition is necessary for that purpose.

MPEP 201.06(c) states:

> B. Application Entitled to a Filing Date
> If a continuation or divisional application as originally filed is entitled to a filing date despite the omission of a portion of the prior application(s), applicant will be permitted to add the omitted material by way of an amendment provided a statement was included in the application as originally filed that incorporates by reference the prior application(s). If the application as originally filed includes a proper incorporation by reference of the prior application(s), an omitted specification page(s) and/or drawing figure(s) identified in a "Notice of Omitted Item(s)" may be added by amendment provided the omitted item(s) contains only subject matter in common with such prior application(s). In such case, applicant need not respond to the "Notice of Omitted Item(s)." Applicant should submit the amendment adding the omitted material prior to the first Office action to avoid delays in the prosecution of the application. See MPEP § 601.01(d) and § 601.01(g).

If applicants desire that Figures 12, 15A and 15C described in the specification be added to the application, the appropriate procedure is by way of amendment requesting the entry of the Figures. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

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

The application will be forwarded the Office of Initial Patent Examination for further processing with a filing date of May 19, 2004 using only the application papers as filed on May 19, 2004.

Telephone inquiries should be directed to the undersigned at (571)272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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KUDIRKA & JOBSE, LLP
ONE STATE STREET
SUITE 800
BOSTON MA 02109

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OCT 2 5 2005

OFFICE OF PETITIONS

Applicant: Schmidt et al.
Appl. No.: 10/850,573
Filing Date: May 19, 2004
Title: ENHANCED OXYGEN-SCAVENGING POLYMERS, AND PACKAGING MADE THEREFROM
Attorney Docket No.: G0003/7248C1
Pub. No.: US 2005/0181156 A1
Pub. Date: August 18, 2005

This is a decision on the request for corrected of patent application publication under 37 CFR 1.221(b), filed on September 14, 2005, for the above-identified application

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication contains a material error, as the first page of the specification in the publication does not include the preliminary amendment filed with the application.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1]

The patent application publication does not include a mistake with respect to the continuity information printed on the first page of the specification. The patent application publication does not include a mistake regarding the failure to include the preliminary amendment in the

[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

publication by the Office because patent application publications are not required to include preliminary amendments, according to 37 CFR 1.215(a)[2], which says the following, in part:

> (a) ... The patent application publication will be based upon the specification and drawings deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application. **The patent application publication may also be based upon amendments to the specification (other than the abstract or the claims) that are reflected in a substitute specification under Sec. 1.125(b),** amendments to the abstract under Sec. 1.121(b), amendments to the claims that are reflected in a complete claim listing under Sec. 1.121(c), and amendments to the drawings under Sec. 1.121(d), provided that such substitute specification or amendment is submitted in sufficient time to be entered into the Office file wrapper of the application before technical preparations for publication of the application have begun. (emphasis added)

§ 1.215(c) says the following:

> (c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the mailing date of the first Office communication that includes a confirmation number for the application, or fourteen months of the earliest filing date for which a benefit is sought under title 35, United States Code, whichever is later.

While the patent application publication may now include a preliminary amendment, the Office is not required to use the preliminary amendment. The Office changed the procedures for publication of patent applications so as to publish applications as amended, when possible. Until this past year, patent application publications were published as originally filed. See Patent Application Publications May Now Include Amendments, 1281 Off. Gaz. Pat. Office Notices 53 (April 13, 2004). The preliminary amendments to the specification filed May 19, 2004 and March 15, 2005, do not comply with 37 CFR 1.125(b). The applicant did not supply a substitute specification in compliance with 37 CFR 1.215(c). The Office correctly published the application in accordance with 37 CFR 1.215(a) and the priority information was included on the front page of the publication.

Applicant is reminded of his duty to conduct a reasonable inquiry before filing a paper before the Office. See MPEP 410.

It would greatly benefit the Office if applicant did not provide a copy of the preliminary amendment previously filed with the request for a corrected publication, as the Office already has a copy in the application file and it unnecessarily increases the cost to the Office. See 37 CFR 1.4(b). A request for corrected publication need only point out what was printed incorrectly

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[2] Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan; Final Rule, 69 FR 56482 (Sept. 21, 2004).

in the application, where the error occurs in the publication and where the correct text is found in the application papers. Marked up relevant copies of the applications papers and the pre-grant publication may facilitate processing of the request. If it is not clear why the error is a material error, further explanation may be warranted.

Applicant's request for a corrected patent application publication on September 12, 2005, 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), must be submitted via the EFS system and questions or request for reconsideration of the decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, Va. 22313-1450

By facsimile: 571-273-8300

Inquiries relating to this matter may be directed to Mark O. Polutta at (571) 272-7709.

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

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P.O. BOX 10395
CHICAGO IL 60610

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OFFICE OF PETITIONS

In re Application of	:	
Tsan-Kuen Wu	:	DECISION ON PETITION TO
Application Number: 10/850581	:	WITHDRAW HOLDING OF
Filing Date: 05/20/2004	:	ABANDONMENT
Attorney Docket Number:	:	
11174/10	:	

This is a decision on the petition filed on 22 June, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

A review of the record reveals that on 28 December, 2005, a non-final Office action was mailed, setting a three (3) month shortened statutory period for reply. A new reissue oath or declaration was required by the non-final Office action.

On 3 April, 2006 (certificate of mailing date 28 March, 2006), a reissue oath or declaration was filed.

On 25 May, 2007, a Notice of Abandonment was mailed, stating the response received on 3 April, 2006, was not a proper reply, or a bona fide attempt at a proper reply.

Upon review, it has been determined that the response received on 3 April, 2006, was in fact a proper reply to the non-final Office action mailed on 28 December, 2005. Accordingly, there was no abandonment in fact.

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

The Office regrets any inconvenience to petitioners.

The application is being referred to Technology Center Art Unit 1761 for further processing.

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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OFFICE OF PETITIONS

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

In re Application of :
Motoo Asai et al :
Application No. 10/850,584 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No. 253296US90RE :

This is a decision on the petition, filed June 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 May 8, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2841 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 4/8/08

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/850587 Patent No: 6989391 B2

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

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

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

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

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

VIRGINIA TOLBERT
Certificates of Correction Branch
703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

SPE

1624
Art Unit

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OFFICE OF PETITIONS

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

In re Application of	:	
Jeffrey M. Aftanas et al	:	
Application No. 10/850,595	:	ON PETITION
Filed: May 19, 2004	:	
Attorney Docket No. 0210B-000254CPC	:	

This is a decision on the petition, filed January 9, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 21, 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 3727 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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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

Mail Date: 04/21/2010

Applicant	: Tsuyoshi Arai	: DECISION ON REQUEST FOR
Patent Number	: 7604764	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,597	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/19/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **25** 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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MORGAN & FINNEGAN, L.L.P.
345 Park Avenue
New York, NY 10154-0053

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In re Application of	:	
Yong-Ho Lim	:	
Application No. 10/850,619	:	NOTICE
Filed: May 21, 2004	:	
Attorney Docket No. 4251-4013		

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 will be referred to Technology Center 2681 for examination in due course.

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

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MERLE W. RICHMAN, III
P.O. BOX 3333
LA JOLLA, CA 92038

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OFFICE OF PETITIONS
ON PETITION

In re Application of
John Tomijenovic, et al.
Application No. 10/850,624
Filed: May 21, 2004
Attorney Docket No. GT001US1

This is a decision in response to the petition, filed August 3, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to a Notice of Non-Compliant Amendment mailed August 22, 2006. A Notice of Abandonment was mailed on May 21, 2007. In response, on August 3, 2007, the present petition was filed.

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

The application is being referred to Technology Center AU 2612 for consideration of the amendment filed August 3, 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

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MAY 17 2005

EDWARD W. CALLAN
NO. 705 PMB 452
3830 VALLEY CENTRE DRIVE
SAN DIEGO, CA 92130

In re application of Jens Erik Sorensen et al. Application No. 10/850,625 Filed: May 21, 2004 For: REMOTE CONTROL OF AUTOMOBILE COMPONENT ARRANGEMENTS	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)**

This is a decision on the petition submitted on April 15, 2005 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a signed declaration indicating Mr. Sorensen 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/slb: 04/27/05

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MEYER UNKOVIC & SCOTT LLP
1300 OLIVER BUILDING
PITTSBURGH, PA 15222

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In re Application of	:	
Hart et al.	:	
Application No. 10/850,626	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 271472.102NP	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 8, 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 May 28, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination 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). In view of the 3-month extension of time filed November 13, 2008, the date of abandonment of this application is November 29, 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 $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 1797 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

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OFFICE OF PETITIONS

In re Patent No. 7,456,264
Issued: November 25, 2008
Application No. 10/850,635
Filed: May 21, 2004
Dkt. No.: MXI-305

: PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)," filed January 26, 2009.

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

Patentee requests that the determination of patent term adjustment be corrected 659 days to 1,171 days.

The application matured into U.S. Patent No. 7,456,264 on November 25, 2008 with a revised patent term adjustment of 659 days. On January 26, 2009, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee). Patentee asserts that the application is entitled to additional adjustment pursuant to 37 CFR 1.702(b) and argues that the correct number of days of Patent Term Adjustment is 1,171 days. Patentee maintains that the total non-overlapping PTO delay under §154(b)(1)(A) & (B) is 1,223 days (711 days + 554 days – 42 overlapping days) as these periods do not occur on the same day. Further, given the applicant delay of 52 days, patentee asserts entitlement to 1,171 days of patent term adjustments (711 days + 554 days – 42 days – 52 days) of patent term adjustment.

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

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

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

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), May

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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.

21, 2004, and ending on the date that the patent issued November 25, 2008 (not including any other periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)).

Pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1), 711 days of patent term adjustment were accorded during the pendency of the application for Office delay prior to the issuance of the patent. Pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b), 554 days of patent term adjustment accrued for Office issuance of the patent more than three years after the filing date of the application.

All of the 554 days of delay under 37 CFR 1.702(b) overlap with the 711 days of patent term adjustment under 37 CFR 1.702(a)(1). Entry of both the 554 days and the 711 days is neither permitted nor warranted given that 711 days is the actual number of days issuance of the patent was delayed.

Accordingly, at issuance, the Office properly entered 711 days of patent term adjustment, having considered the 554 days of Office delay under the three-year pendency provision in conjunction with the 711 days of examination delay, and having reduced the adjustment 52 days for applicant's delay.

In view thereof, no correction of the patent term adjustment of 659 days will be made.

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

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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P.O. Box 1450
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CHRISTIE PARKER & HALE, LLP
350 WEST COLORADO BOULEVARD
P.O.BOX 7068
PASADENA, CA 91109-7068

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OFFICE OF PETITIONS

In re Application of :
Bardia Pezeshki et al :
Application No. 10/850,638 : ON PETITION
Filed: May 20, 2004 :
Attorney Docket No. 52500/DMC/S965

This is a decision on the petition filed, April 4, 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 23, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2872 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of :
Miles Libbey : DECISION ON PETITION
Application No. 10/850,642 :
Filed: 21 May, 2004 :
Atty Dckt No. 08226/0200322-US0 :

This is a decision on the petition, filed on 14 September, 2005, under 37 CFR 1.137(f) which is treated as a petition to revive the above-identified nonprovisional application under the unintentional provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of foreign or international application(s) filed on 20 May, 2005. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

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

(1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

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

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

The present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

A projected publication date will be assigned in due course. Petitioner will be notified of this date in a separate correspondence.

The application is being referred to Technology Center Art Unit 2157 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at 571.272.3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

V. GERALD GRAFE, ESQ.
GENERAL COUNSEL
INLIGHT SOLUTIONS, INC.
800 BRADBURY SE
ALBUQUERQUE NM 87106

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OCT 25 2007

OFFICE OF PETITIONS

In re Application of :
Shonn P. Hendee et al :
Application No. 10/850,646 : DECISION GRANTING PETITION
Filed: May 21, 2004 : UNDER 37 CFR 1.137(b)
Attorney Docket No. P0109.US3 :

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

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and 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 November 29, 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 matter is being referred to Technology Center AU 1631.

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

V. GERALD GRAFE
P.O. BOX 2689
CORRALES, NM 87048

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1621 BARBER LANE
MS: D-105
MILPITAS, CA 95035

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AUG 20 2008

In re Application of	:	
Berman et al.	:	
Application No. 10/850,648	:	DECISION ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 04-0319	:	

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 application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed October 18, 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 timely obtained. Accordingly, the application became abandoned on January 19,2008. A Notice of Abandonment was mailed April 29, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay.

The address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 1795 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: James R. Foley
105 West Adams Street, Suite 3600
Chicago, Illinois 60603

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KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of
Volker Sauermann
Application No. 10/850,663
Filed: May 21, 2004
Attorney Docket No.11884/413201

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed February 6, 2009, to revive the above-identified application.

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

The above-identified application became abandoned for failure to reply to the non-final Office action mailed May 16, 2008, which set a shortened statutory period for reply of three-months (3) month from its mailing date. No response was received within the allowable period, and the application became abandoned on August 17, 2008. A Notice of Abandonment was mailed on January 6. 2009.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

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

[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.

primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

[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

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts that the non-final Office action was not received.

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 reasons petitioner's argument must necessarily fail are addressed below.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

It is noted that petitioner provide a copy of the docket record specific to the subject application, however; petitioner is required to provide a master docket for the firm that shows all replies docketed for a date three months from the mail date of the non-final Office action. As indicated above, if a master docket does not exists, the renewed petition should so state and reference the docket records filed with the instant petition.

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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.

mail date of the nonreceived Office action as required by MPEP 711.03(c) cited above. The renewed petition must be accompanied by the portion of the master requested.

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 ($1,620.00 for a large entity and $810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of :
Volker Sauermann :
Application No. 10/850,663 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No.11884/413201

This is a decision on the renewed petition under 37 CFR 1.137(a) filed March 17, 2009.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply to the non-final Office action mailed May 16, 2008, which set a shortened statutory period for reply of three-months (3) month from its mailing date. No response was received within the allowable period, and the application became abandoned on August 17, 2008. A Notice of Abandonment was mailed on January 6, 2009. A petition under 37 CFR 1.137(a) was filed on February 6, 2009, and dismissed by a decision mailed February 26, 2009.

The amendment filed February 6, 2009, is noted.

The file is now being forwarded to Technology Center GAU 2175 for further processing including consideration of the amendment filed February 6, 2009.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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In re Application of	:	
Roland A. Wood, et. al.	:	
Application No. 10/850,673	:	DECISION ON PETITION
Filed: May 21, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. H0005015-0760-C1(1100.123	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 9, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the above-noted, prior-filed application in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the prior-filed 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).

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

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

By mail: Mail Stop PETITIONS
Commissioner for Patents
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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

Since the address of record differs from the address given in the petition, a courtesy copy of this decision is being mailed to the address given in the petition. Thereafter, all future correspondence will be mailed to the address of record.

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Brian N. Tufte
Compton, Seager & Tufte, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, MN 55403-2402

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OFFICE OF PETITIONS

HONEYWELL INTERNATIONAL, INC.
101 COLUMBIA ROAD
P.O. BOX 2245
MORRISTOWN, NJ 07962-2245

In re Application of	:	
Roland A. Wood, et. al.	:	
Application No. 10/850,673	:	DECISION ON PETITION
Filed: May 21, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. H0005015-0760-C1(1100.123	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed December 4, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 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.

This application is being forwarded to Technology Center Art Unit 1795 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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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
10/850,673	05/21/2004	1795	1406	H0005015-0760-C1(1100.123	41	6

CONFIRMATION NO. 9054

CORRECTED FILING RECEIPT

128
HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

OC000000034224222

Date Mailed: 01/27/2009

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)

Roland A. Wood, Bloomington, MN;
Tom Rezachek, Cottage Grove, MN;

Power of Attorney: The patent practitioners associated with Customer Number 25226

Domestic Priority data as claimed by applicant

This application is a CON of 10/750,581 12/29/2003

Foreign Applications

If Required, Foreign Filing License Granted: 07/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/850,673**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Micro fuel cell

Preliminary Class

429

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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OFFICE OF PETITIONS

In re Application of Nowak et al. :
Application No. 10/850,701 : Decision on Petition
Filing Date: May 21, 2004 :
Attorney Docket No. 01-1311-A :

This is a decision on the petition under 37 CFR 1.137(b), filed July 24, 2007, 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 23, 2007, 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 April 24, 2007.

The instant petition requests revival of the application.

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

(1) the reply required to the outstanding Office action or notice, unless previously filed,
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to item (1), a proper reply can include the filing of a continuation application. Petitioner filed a continuation application on July 24, 2007. The application has been assigned Application No. 11/782,365.

As to item (2), petitioner has paid the required petition fee of $1,500.

As to item (3), 37 CFR 1.137(b)(3) requires "a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to

37 CFR 1.137(b) [was] unintentional." To the extent any statement of delay in the petition varies from this exact language, the statement will be construed as the equivalent of the statement above. If the entire delay from the date of abandonment, until the filing of the petition was not unintentional, petitioner must notify the Office.

As to item (4), a terminal disclaimer is not required.

Petitioner has met the requirements to revive the application pursuant to 37 CFR 1.137(b). Therefore, the application is hereby revived. Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of Application No. 11/782,365.

Petitioner has submitted $1,020 for a three-month extension of time. However, payment for an extension of time is unnecessary when reviving an application. Therefore, the Office has credited $1,020 back to petitioner's deposit account.

Technology Center Art Unit 1656 will be informed of the instant decision and will mail a Notice of Abandonment using the date after the mailing date of the instant decisions as the date of abandonment.

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	:	
Randy Alan DOMINGUEZ	:	
Application No. 10/850,711	:	DECISION ON PETITION
Filed: May 20, 2004	:	
Attorney Docket No. 2935-PAT	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 24, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed January 9, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 10, 2007.

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 10, 2007. If possible, that party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply

was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). As Donn K. Harms (Harms) was the party having the right to reply at the date of abandonment, Harms should explain, why this application became abandoned while it was under his control and what effort(s) was made to further reply and with whom this matter was discussed. When did Harms become aware of the abandonment of this application? The record does not show with substantiating evidence what the intent was with regard to this application prior to the date of abandonment on February 10, 2007.

Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at the law office, 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 the law office 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).

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 $1175 extension of time fee submitted with the petition on July 24, 2009, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account 07-1338.

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.

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) 272-6735.

/Diane C. Goodwyn/
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Randy Alan DOMINGUEZ	:	
Application No. 10/850,711	:	DECISION ON PETITION
Filed: May 20, 2004	:	
Attorney Docket No. 2935-PAT	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed February 16, 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 Restriction Requirement, mailed January 9, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 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 an amendment, (2) the petition fee of $810; and (3) a statement of unintentional delay.

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

This application is being referred to Technology Center AU 3722 for appropriate action by the Examiner in the normal course of business on the reply received February 16, 2010.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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

In re Patent No. 7,301,601 : DECISION ON APPLICATION FOR
Issued: November 27, 2007 : PATENT TERM ADJUSTMENT
Application No. 10/850,714 :
Filed: May 20, 2004 :
Dkt. No.: 9366/206 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed January 10, 2008.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,301,601 on November 27, 2007. The instant request for reconsideration was timely filed in accordance with 37 CFR 1.705(d). The patent issued with a PTA of 102 days. Patentees argue that the patent is entitled to an adjustment of 245 days.

The patent is entitled to an adjustment of 102 days as indicated on the Letters Patent.

Patentees do not dispute the adjustments totaling 191 days or the reductions totaling 89 days accorded at the time of issuance of the patent.

Instead, patentees argue that the patent is entitled to an additional adjustment of 191 days for the Office's failure to issue the patent within three years from the date upon which the application was filed.

If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B) (and 37 C.F.R. § 1.704(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

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issuance of the application that overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. *See*, 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Red. Reg. 21704 (April 22, 2004).

In view thereof, the instant patent is not entitled to further adjustment.

Accordingly, at the time of issuance, the patent was entitled to an adjustment of 102 days.

Any request for reconsideration of this decision must be submitted within two months of the mail date of the instant decision. The time period for reconsideration may not be extended pursuant to 37 CFR 1.136.

The required application fee of $200.00 has been charged to patentees' deposit account, as authorized.

Telephone inquiries specific to this matter may be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A Fries

Kery Fries
Senior Patent Attorney
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

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P.O. BOX 1450
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Dennis G. LaPointe
LaPointe Law Group, PL
P.O. Box 1294
Tarpon Springs FL 34688

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OFFICE OF PETITIONS

In re Application of :
Welden : DECISION ON PETITION
Application No. 10/850,727 :
Filed: May 21, 2004 :
Atty. Dkt. No.: 3809.002A :

This decision is in response to the petition under 37 CFR 1.137(a) to revive the above-identified application, filed April 12, 2007. This matter is also being treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

This application was held abandoned January 7, 2007 for failure to timely submit a proper reply to the non-final Office action mailed October 6, 2006. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed April 13, 2007.

DECISION UNDER 37 CFR 1.181

Petitioner argues that a proper response to the non-final Office action was timely submitted October 13, 2006.

Review of Office records reveals that the response, received at the USPTO on October 13, 2006, while intended for instant application did not include the correct application serial number. The response was matched with the application number indicated thereon (10/830,737). As a result of applicants' error, the application was held abandoned.

Correspondence directed to the Patent and Trademark Office concerning a previously filed application for a patent must identify the application number and filing date assigned to that application by the Office. See, 37 CFR 1.5(a). In the above-referenced application, applicant failed to correctly identify the application by citing an incorrect application number in the response. The Office elects, in this instance, to treat applicant's error as a correctable minor error as permitted under MPEP 502. However, applicants are reminded that minor errors, such as occurred in the instant application, are to be avoided in the

future by the careful review of correspondence prior to submission to the Office.

In view of the evidence thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

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

DECISION UNDER 37 CFR 1.137(a)

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

However, in view of the decision to withdraw the holding of abandonment, the petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

This application is being forwarded to Technology Center 3700 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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MAIL

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Leo J. Aubel
111 Rivershire Lane
Lincolnshire IL 60069

In re Application of :
Robert W. Beckwith :
Application No. 10/850,744 : DECISION ON PETITION
Filed: May 22, 2004 : TO MAKE SPECIAL
For: **HUB WHICH CONVERTS SCADA** :
PROTOCOLS TO THE BLUEJAYTM :
PROTOCOL

This is a decision on the petition under 37 C.F.R. §1.102 to make special filed May 22, 2004 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 the birth certificate for Robert Beckwith indicating 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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PAUL W. MARTIN
NCR CORPORATION, LAW DEPT.
3097 Satellite Blvd., 2nd Floor
Duluth, GA 30096

Mail Date: 05/20/2010

Applicant	: Gary A. Ross	: DECISION ON REQUEST FOR
Patent Number	: 7639858	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/850,755	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **917** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
600 GALLERIA PARKWAY, S.E.
STE 1500
ATLANTA GA 30339-5994

MAILED

JUL 15 2010

OFFICE OF PETITIONS

In re Application of	:	
Turgut AYTUR	:	
Application No. 10/850,774	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: May 21, 2004	:	
Attorney Docket No. 252326-1080	:	

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 Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

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AUG 1 8 2006
OFFICE OF PETITIONS

Han-Yi Lee
BAYSHORE PATENT GROUP, LLC.
520 Chantecler Dr.
Fremont CA 94539

In re Application of Jen Chun WANG Application No. 10/850,779 Filed: May 21, 2004 Attorney Docket No. US 930018	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 17, 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 Monica A. Graves at 571-272-7253.

David Bucci
Petitions Examiner
Office of Petitions

cc: RICH Patent & Trademark Office
10F-2, 164 Dun-Hwa South Road
2nd Section
Taipei, Taiwan 106

UNITED STATES PATENT AND TRADEMARK OFFICE

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KENYON & KENYON
Suite 600
333 W. San Carlos, Street
San Jose, CA 95110-2711

Mail Date: 04/21/2010

Applicant	: Martin Chen	: DECISION ON REQUEST FOR
Patent Number	: 7603262	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,796	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **728** 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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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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SEP 24 2004

OFFICE OF PETITIONS

In re Application of
Gilbert et al.
Application No. 10/850,807
Filed: May 21, 2004
Attorney Docket Number: 019633-000126US

: NOTICE

This is a notice regarding your request filed on September 2, 2004, that small entity status be removed for the above identified patent pursuant to 37 CFR 1.27.

The change of status to a large entity has been entered and made of record.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-0251 until September 24, 2004 thereafter (571) 272-3215.

Charlema R. Grant
Petitions Attorney
Office of Petitions

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KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Muhammad M. Alam	: DECISION ON REQUEST FOR
Patent Number	: 7571118	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,814	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1382** 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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SMYRSKI LAW GROUP, A PROFESSIONAL CORPORATION
3310 AIRPORT AVENUE, SW
SANTA MONICA, CA 90405

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OFFICE OF PETITIONS

In re Application of Chuang et al. :
Application No. 10/850,818 : Decision on Petition
Filing Date: May 21, 2004 :
Attorney Docket No. KLAC0081 :

This is a decision on the petition, filed May 22, 2006, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on May 21, 2005. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country. As a result, 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 the above statute and 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of December 21, 2006, accompanies this decision on petition.

The Office of Publications will be informed of the instant decision. Thereafter, the Office of Publications will mail a Notice of Publication Fee Due to petitioner.

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

Attachment: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/850,818	05/21/2004	Yung-Ho Chuang	KLAC00081

CONFIRMATION NO. 7875

30438
SMYRSKI LAW GROUP, A PROFESSIONAL CORPORATION
3310 AIRPORT AVENUE, SW
SANTA MONICA, CA 90405

Date Mailed: 09/13/2006

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 12/21/2006.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282. Questions regarding publications of patent applications should be directed to the patent application publication hotline at (703) 605-4283 or by e-mail pgpub@uspto.gov.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

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SHUMAKER & SIEFFERT, P. A.
1625 RADIO DRIVE
SUITE 300
WOODBURY, MN 55125

Mail Date: 04/20/2010

Applicant	: Georgios B. Giannakis	: DECISION ON REQUEST FOR
Patent Number	: 7590188	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,825	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1468** 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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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/850,832	05/21/2004	2812	0.00	2003 P 51278 US	2	27	3

25962
SLATER & MATSIL, L.L.P.
17950 PRESTON RD, SUITE 1000
DALLAS, TX 75252-5793

CONFIRMATION NO. 7887
FILING RECEIPT
OC000000013371882
OC000000013371882

Date Mailed: 07/29/2004

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)

Jens Paul, Dresden, GERMANY;
Martin Reiss, Ottendorf-Okrilla, GERMANY;

Domestic Priority data as claimed by applicant

Foreign Applications

GERMANY 103 23 296.6 05/21/2003

If Required, Foreign Filing License Granted: 07/28/2004

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

Non-Publication Request: No

Early Publication Request: No

Title

Arrangement for reducing stress in substrate-based chip packages

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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Paper No.

Attorney, Intellectual Property
Honeywell International, Inc.
101 Columbia Rd.
P.O. Box 2245
Morristown, NJ 07962

FAX RECEIVED
MAY 26 2005
OFFICE OF PETITIONS

In re Application of	:	
Thomas Vaughn	:	DECISION REFUSING STATUS
Application No. 10/850,853	:	UNDER 37 CFR 1.47(b)
Filed: May 21, 2004	:	
Attorney Docket No. H0005515	:	

This is a decision on the "PETITION TO PERMIT ASSIGNEE TO SIGN DECLARATION AND ASSIGNMENT WHERE INVENTOR REFUSES TO SIGN (37 CFR 1.47)" filed September 28, 2004.

The petition under 37 C.F.R. 1.47(b) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing 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 May 21, 2004, without an executed oath or declaration. Accordingly, on July

28, 2004, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and surcharge for its late filing. This Notice set a period for reply of two months, with extensions of time obtainable under § 1.136(a).

In response, rule 47(b) applicant Honeywell filed the instant petition requesting that they be able to sign the declaration on behalf of sole inventor Thomas Vaughn. Rule 47 applicant maintains that status under 37 C.F.R. § 1.47(b) is proper because the sole inventor, Thomas Vaughn, refuses to join in the application. A grantable petition under 37 C.F.R § 1.47(b) requires:

(1) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63 and 1.64 or 1.175;

(2) that the rule 47 applicant must state his or her relationship to the inventor as required by 37 C.F.R. § 1.64;

(3) 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);

(4) the petition fee;

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

(6) that rule 47 applicant make out a prima facie case (i) that the invention has been assigned to him or her or (ii) that the inventor has agreed in writing to assign the invention to him or her or (iii) otherwise demonstrate a proprietary interest in the subject matter of the invention; and

(7) rule 47 applicant must prove that the filing of the application is necessary (i) to preserve the rights of the parties or (ii) to prevent irreparable damage. See MPEP § 409.03(g).

See 35 U.S.C. § 118; 37 C.F.R.§1.47; §§ 409.03 and 605 of the Manual of Patent Examining Procedure (8th ed.)(May 2004)(MPEP).

The petition satisfies requirements (3), (4), and (6). The petition includes copies of e-mail communications between the

inventor and rule 47(b) applicant; payment of the petition fee; and an employment agreement signed by inventor Vaughn covering rights to certain inventions during the course of his employment. The e-mail communications have been reviewed, and found in this instance, to be adequate proof that inventor Vaughn has refused to join in the application after having been presented with the application papers. Likewise, rule 47(b) applicant has made out a prima facie case of proprietary interest with evidence that inventor Vaughn by his signature on an employment agreement has agreed in writing to assign the invention.

However, the instant petition does not satisfy requirements (1), (2), (5) and (7):

As to requirements (1) and (2), rule 47(b) has not submitted a § 1.63 declaration (with late surcharge). A declaration submitted by an assignee on behalf of the inventors must comply with § 1.63. In addition, to be in compliance with § 1.64, the rule 47(b) applicant must make the required oath or declaration. The declaration must state the relationship of the person, making the oath or declaration, to the inventor, and upon information and belief, the facts which the inventor is required to state. Where a corporation is the 47(b) applicant, an officer thereof should normally sign the necessary oath or declaration. Regardless, the title or position of the person signing must be stated. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, See MPEP 324. See MPEP 409.03(b).

As to item (5), the petition does not include a statement of the last known address of non-signing inventor Vaughn.

As to item (7), rule 47(b) applicant has made no assertion. Rule 47 applicant must submit proof of irreparable damage. See MPEP 409.03(g).

On Request for Reconsideration, to avoid abandonment and attain 1.47 status, applicant must correct the noted deficiencies and provide a 1.47 petition in compliance with all applicable law.

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

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

Attorney, Intellectual Property
Honeywell International, Inc.
101 Columbia Rd.
P.O. Box 2245
Morristown, NJ 07962

COPY MAILED

AUG 1 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Thomas Vaughn	:	DECISION ACCORDING STATUS
Application No. 10/850,853	:	UNDER 37 CFR 1.47(b)
Filed: May 21, 2004	:	
Attorney Docket No. H0005515	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR § 1.47(b)" filed July 25, 2005.

The above-identified application was filed on May 21, 2004, without an executed oath or declaration. In response to the "Notice to File Missing Parts of Application" mailed July 28, 2004, on September 28, 2004, rule 47 applicant filed the initial petition, asserting that status under 37 C.F.R. § 1.47(b) is proper because the sole inventor, Thomas Vaughn, refuses to join in the application. By decision mailed May 26, 2005, the petition was dismissed for failure to meet the following requirements of § 1.47(b):

(1) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63 and 1.64 or 1.175;

(2) that the rule 47 applicant must state his or her relationship to the inventor as required by 37 C.F.R. § 1.64;

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

(7) rule 47 applicant must prove that the filing of the application is necessary (i) to preserve the rights of the parties or (ii) to prevent irreparable damage.

On instant renewed petition, rule 47 applicant submitted a declaration executed by attorney Kris Fredrick on behalf of Honeywell International Inc. and in place of inventor Vaughn, a statement of the last known address of the non-signing inventor, and a showing of irreparable harm. Moreover, the declaration includes the title of the person signing on behalf of the 47 applicant and a statement that that person is authorized to sign on behalf of Honeywell.

The declaration filed July 25, 2005, and the petition have been reviewed and are now both found in compliance with 37 CFR 1.47(a).

This application is hereby accorded Rule 1.47(a) status.

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

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW 08-04

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

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AUG 0 9 2004

OFFICE OF PETITIONS

In re Application of	:
Osorio, Fernandez, Mancha, and	: DECISION REFUSING STATUS
Garces	: UNDER 37 CFR 1.47(a)
Application No. 10/850,890	:
Filed: 20 May, 2004	:
Attorney Docket No. ARNO122861	:

This is in response to the petition filed under 37 CFR 1.47(a) on 20 May, 2004.

The petition is **DISMISSED**.

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

The above-identified application was filed on 20 May, 2004, with a declaration naming Jorge Osorio, Jose Maria Fernandez, Manuel Mancha, and Rafael Garces as joint inventors and signed by all joint inventors except Osorio on behalf of themselves and joint inventor Osorio.

Petitioners state that Orsio has refused to sign the declaration for the present application.

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

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

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

(3) the petition fee;

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

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

The petition lacks item (1).

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

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

Alternatively, it is noted that the present application is a continuation of Application No. 10/306,176, which is a division of Application No. 09/649,288, which is continuation of Application No. 08/682,690. Petitioners have presented a copy of the executed declaration filed in prior Application No. 08/682,690. If Rule 1.47 status was granted in the prior application from which the oath or declaration is supplied, petitioners could petition for Rule 1.47 status in the present case based on the grant of status in the prior application. Petitioners would need to submit a copy of the decision granting Rule 47 status in that application to be accorded Rule 47 status in the present application.

---

[1] MPEP 409.03(d).

The petition fee of $130.00 will be charged to counsel's deposit account, No. 03-1740 as authorized on the application transmittal cover sheet.

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
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

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SEP 10 2004

OFFICE OF PETITIONS

In re Application of	:	
Osorio, Fernandez, Mancha, and	:	
Garces	:	LETTER
Application No. 10/850,890	:	
Filed: 20 May, 2004	:	
Attorney Docket No. ARNO122861	:	

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 23 August, 2004.

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. 08/682,690, filed on 30 July, 1997. The present application is a continuation of Application No. 10/306,176, which is a division of Application No. 09/649,288, which is a continuation of Application No. 08/682,690. Furthermore, a copy of the decision, mailed on 3 September, 1998, granting a petition in Application No. 08/682,690 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.

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.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

Mail Date: 04/21/2010

Applicant	: Jan Lipson	: DECISION ON REQUEST FOR
Patent Number	: 7560298	: RECALCULATION of PATENT
Issue Date	: 07/14/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,903	: OF WYETH
Filed	: 05/21/2004	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

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JUL 24 2007

OFFICE OF PETITIONS

In re Application of Euan Ashley et al Application No. 10/850,941 Filed: May 21, 2004 Attorney Docket No. 2003309-0066(10030087-1)	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed March 2, 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 Nonfinal Rejection of May 23, 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 1644.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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Inverness Medical Innovations / WSGR
Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304

Mail Date: 04/21/2010

Applicant	: Kenneth F. Buechler	: DECISION ON REQUEST FOR
Patent Number	: 7604946	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/850,954	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **598** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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SEP 14 2009

OFFICE OF PETITIONS

In re Application of	:	
DEMARAY, Richard et al.	:	
Application No. 10/850,968	:	DECISION ON PETITION
Filed: April 06, 2005	:	TO WITHDRAW
Attorney Docket No. **10655.0015-01**	:	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 28, 2009.

The request is **NOT APPROVED**.

The Office has revised its change in procedure for request to withdraw from representation applies to requests filed on or after May 12, 2008.

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 cannot be approved because there is no indication that acts (1) thru (3) noted in the above-identified certifications have been performed. See PTO/SB/83 (11-08).

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

evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

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

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

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **HAYNES AND BOONE, LLP**
IP SECTION
2323 VICTORY AVENUE
SUITE 700
DALLAS, TX 75219

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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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Application of	:	
DEMARAY, Richard E. et al.	:	
Application No. 11/850,968	:	DECISION ON PETITION
Filed: May 20, 2004	:	TO WITHDRAW
Attorney Docket No. **10655.0034-00**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 28, 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 C. Larry O'Rourke on behalf of all attorneys of record who are associated with customer No. 22852. All attorneys/agents associated with the Customer Number 22852 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

/Tredelle D. Jackson/
Petitions Examiner
Office of Petitions

cc: **RICHARD E. DEMARAY**
190 FAWN LANE
PORTOLA VALLEY CA 94028

cc: **HAYNES AND BOONE, LLP**
IP SECTION
2323 VICTORY AVENUE
SUITE 700
DALLAS, TX 75219

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United States Patent and Trademark Office
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Lucash, Gesmer & Updegrove, LLP
40 Broad Street
Suite 300
Boston, MA 02109

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APR 3 0 2006

OFFICE OF PETITIONS

In re Application of	:	
William F. Dolphin et al.	:	
Application No. 10/850,976	:	DECISION ON
Filed: May 21, 2004	:	PETITION TO WITHDRAW
Attorney Docket No. 4015.1000-001	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 30, 2006.

The request is **NOT APPROVED**.

A review of the file record indicates that David Jacobs and attorneys/agents associated with customer number 24390 were never appointed to have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

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

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Mathew J. Temmerman, Esq.
Temmerman Law Office
423 E Street
Davis, CA 95616

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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WALL & TONG, LLP/
ALCATEL-LUCENT USA INC.
595 SHREWSBURY AVENUE
SHREWSBURY, NJ 07702

Mail Date: 05/20/2010

Applicant	: Thomas P. Chu	: DECISION ON REQUEST FOR
Patent Number	: 7620033	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/850,977	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1580** 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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BEYER WEAVER LLP
P.O. BOX 70250
OAKLAND CA 94612-0250

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OFFICE OF PETITIONS

In re Application of	:	
ALBERTSON, Donna G. et al.	:	
Application No. 10/850,986	:	DECISION ON PETITION
Filed: May 20, 2004	:	TO WITHDRAW
Attorney Docket No. **UCOTP060/2002-252-1**	:	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 December 13, 2007.

The request is **NOT APPROVED**.

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

The request to withdraw less than all attorneys appointed by customer number 22798 cannot be approved. The addition and/or deletion of a practitioner from the list of practitioners associated with a Customer Number should be made by submitting a "Request for Customer Number Data Change" (PTO/SB/124) which will result in the addition or deletion of such practitioner from the list of persons authorized to represent any applicant or assignee of the entire interest who appointed all of the practitioners associated with such Customer Number. See MPEP 403 Section I. Customer Number Practice.

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 Tredelle Jackson at 571-272- 2783.

Monica A. Graves
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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DIW 10-04

BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

COPY MAILED

OCT 15 2004

OFFICE OF PETITIONS

In re Application of	:	
Pempsell, Corley, and Hansen	:	
Application No. 10/850,990	:	DECISION REFUSING STATUS
Filed: 20 May, 2004	:	UNDER 37 CFR 1.47(a)
Atty Docket No. 075490.0102	:	

This is in response to the petition filed under 37 CFR 1.47(a) on 21 September, 2004.

The petition is **DISMISSED**.

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

The above-identified application was filed on 20 May, 2004, without an executed oath or declaration. Accordingly, on 26 July, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set.

In response, on 21 August, 2004, the present petition, petition fee, and a declaration naming Mark Pempsell, Ryan Corley, and Erick Hansen as joint inventors and signed by joint inventors Pempsell and Corley on behalf of themselves and on behalf of joint inventor Hansen.

Petitioners' counsel asserts that a copy of the application was sent to joint inventor Hansen, but was returned as undeliverable.

Petitioners have also included a declaration by joint inventor Corley in which he states that joint inventor Hansen telephoned him and stated that he would not "sign anything."

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

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
(3) the petition fee;
(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1). With regard to item 1, a brief Internet search shows the address listed for joint inventor Hansen as 24404 rather than 24004 Hampton Drive. As such, it appears that the application papers may not have been sent to the correct address. Petitioners should verify the address of the non-signing inventor and, if it is determined that the address to which the application papers were sent was not the correct address, send the application papers to the non-signing inventor's last known address.

With regard to the non-signing inventor's oral refusal to sign anything, notwithstanding joint inventor Corley's declaration, in order for a Rule 47 petition to be granted, the inventor **must** be afforded an opportunity to review the application.[1] Therefore, petitioners should sent a copy of the application papers to Hansen's last known address. Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers (specification, including claims, drawings, if any, and the declaration) to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

---

[1] See In re Gray, 115 USPQ 80 (Comm'r Pat. 1956). The application papers must be sent or given to the non-signing inventor unless he or she refuses to accept delivery of the papers.

If repeated attempts to contact Hansen by telephone, mail, and e-mail searches fail, petitioners will have demonstrated that diligent efforts were made to contact the non-signing inventor.

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

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
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

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DEC 13 2004

OFFICE OF PETITIONS

In re Application of	:	
Pempsell, Corley, and Hansen	:	
Application No. 10/850,990	:	DECISION ACCORDING STATUS
Filed: 20 May, 2004	:	UNDER 37 CFR 1.47(a) .
Atty Docket No. 075490.0102	:	

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 4 November, 2004.

The petition is **GRANTED**.

The above-identified application was filed on 20 May, 2004, without an executed oath or declaration. Accordingly, on 26 July, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set. The petition filed on 21 September, 2004, was dismissed on 15 October, 2004.

Petitioners have shown, via the statement of petitioner's registered patent attorney Thomas A. Beaton, that the non-signing inventor, Erick Hansen, has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, petitioners have established that a copy of the application was sent to the non-signing inventor. However, the non-signing inventor refused in writing, via his attorney, to execute the declaration listing him as a joint inventor along with Mark Pempsell and Ryan Corley.

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, not 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 referred to Technology Center Art Unit 2632 for examination in due course.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DNW 12-04

OIPE JC11
JAN 0 3 2005
PATENT & TRADEMARK OFFICE

Erick Hansen
24404 Hampton Drive, Unit B
Valencia CA 91355

COPY MAILED
DEC 1 3 2004
OFFICE OF PETITIONS

In re Application of
Pempsell et al.
Application No. 10/850,990
Filed: 20 May, 2004
For: METHOD AND SYSTEM FOR SOURCE TAGGING AN OPTICAL STORAGE DEVICE

Dear Mr. Hansen:

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

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

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

D Wood
Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

BAKER BOTTS LLP
2001 ROSS AVENUE
DALLAS TX 75201-2980

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OCT 1 4 2008

OFFICE OF PETITIONS

In re Application of
DZAU, Victor J. et al.
Application No. 10/850,994
Filed: May 20, 2004
Attorney Docket No. **ANV-0021C5**

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 20, 2008.

The request is not approved because it is **moot.**

A review of the file record indicates that the power of attorney to HELLER EHRMAN LLP has been revoked by the assignee of the patent application on September 02, 2008 and a change of address on September 30, 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 Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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JUL 24 2009

OFFICE OF PETITIONS

In re Application of	:	
Dzau et al.	:	DECISION ON PETITION
Application No. 10/850,994	:	TO WITHDRAW
Filed: May 20, 2004	:	FROM RECORD
Attorney Docket No. ANV-0021C5	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed May 21, 2009.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Christopher Devry on behalf of all attorneys of record associated with Customer Number 77845. However, since the practitioners were not appointed by a Customer Number upon filing of the instant application, petitioner may not withdraw the practitioners by Customer Number.

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

Currently, there is no outstanding Office action that requires a reply.

Telephone inquires concerning this decision should be directed to Petitions Examiner Joan Olszewski at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Liana Walsh/
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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Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park CA 94025-1105

MAILED

APR 26 2010

OFFICE OF PETITIONS

In re Application of	:	
DZAU, Victor J. et al.	:	
Application No. 10/850,994	:	DECISION ON PETITION
Filed: May 20, 2004	:	TO WITHDRAW
Attorney Docket No. **ANV-0021C5**	:	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 05, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office 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 Christopher De Vry on behalf of all attorneys of record who are associated with customer No. 77485. All attorneys/agents associated with the Customer Number 77485 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 J. Michael Schiff at the address indicated below.

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **J. MICHAEL SCHIFF**
4320 VON KARMAN AVENUE
NEWPORT BEACH CA 92260

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

KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON, DC 20005

Mail Date: 04/21/2010

Applicant	: Volker Sauermann	: DECISION ON REQUEST FOR
Patent Number	: 7574676	: RECALCULATION of PATENT
Issue Date	: 08/11/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,011	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **950** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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JUL 20 2005

WILLIAM W. HAEFLIGER
201 S. LAKE AVE
SUITE 512
PASADENA CA 91101

In re Application of	:	
James C. Caillouette	:	
Serial No.: 10/851,017	:	DECISION ON PETITION
Filed: May 24, 2004	:	
For: Detection of Menopause Status and	:	
Treatment Thereof	:	

This is in response to applicants' petition filed November 26, 2004 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

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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FORD GLOBAL TECHNOLOGIES, LLC.
FAIRLANE PLAZA SOUTH, SUITE 800
330 TOWN CENTER DRIVE
DEARBORN MI 48126

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SEP 2 0 2006
OFFICE OF PETITIONS

In re Application of	:	
Per MATTSSON	:	
Application No. 10/851,026	:	DECISION ON PETITION
Filed: May 21, 2004	:	UNDER 37 CFR 1.55(c)
Attorney Docket No. 81094722	:	

This is a decision on the petition under 37 CFR § 1.55(c), filed May 26, 2006, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign European Patent Office Application No. 03011525.7, filed May 21, 2003.

The petition is **DISMISSED AS MOOT.**

This application was filed May 21, 2004, which is after November 29, 2000 and within 12 months of May 21, 2003 (the filing date of the foreign application to which benefit is now being claimed). On May 21, 2004, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1370 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

The current procedure where a claim for priority under 37 CFR § 1.55(c) is not included in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the acknowledgement of the foreign application in the application within the time period set forth in 37 CFR § 1.55(c). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.55(c). In the present case, the Office noted the acknowledgement of the prior-filed application in the oath or declaration filed with the application, as shown by its inclusion on the filing receipt.

Application No. 10/851,026

In view of the above, the $1370 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to 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 AU 3681 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

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JAN 04 2010

In re Application of	:	
Stephanie H. Maes	:	
Application No. 10/851,049	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 021756-001300US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 30, 2009, 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 April 15, 2009. 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 extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is July 16, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $810 and the submission required by 37 CFR 1.114, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

This application is being referred to Technology Center AU 2451 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Chris Bottorff
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

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AUG 13 2007

OFFICE OF PETITIONS

In re Application of :
John P. Lunsford, et al. :
Application No. 10/851,051 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No. 80121-0897 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 1, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 4, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 5, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $790, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500; (3) a proper statement of unintentional delay; and (4) terminal disclaimer.

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

This application is being referred to Technology Center AU 3739 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petitions Examiner
Office of Petitions

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

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AUG 13 2007

OFFICE OF PETITIONS

In re Application of	:	
John P. Lunsford, et al.	:	
Application No. 10/851,051	:	DECISION ON REQUEST FOR
Filed: May 21, 2004	:	REVOCATION OF POWER
Attorney Docket No. 80121-08977	:	OF ATTORNEY
	:	

This is a decision on the Request to Revoke the attorney or agent of record under 37 C.F.R. § 1.36(a) filed March 1, 2007.

The request is APPROVED.

A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceeding of a case by an applicant for patent (§ 1.41(b)) or an assignee of the entire interest of the applicant under § 3.71(b). Fewer than all of the applicants (or by fewer than the assignee of the entire interest of the applicant) may only revoke the power of attorney upon a showing of sufficient cause, and payment of the petition fee set forth § 1.17(h). For the assignee to take action a proper statement under § 3.73(b) is required.

The correspondence address of record remains unchanged.

There are no pending Office actions at the present time.

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

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

MAIL

APR 2 8 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of NAGATA	:	
Application No.: 10/851,085	:	DECISION ON PETITION
Filing Date: May 24, 2004	:	FOR ACCELERATED
For: STORAGE DEVICE AND	:	EXAMINATION UNDER
INFORMATION MANAGEMENT	:	M.P.E.P. §708.02(VIII)
SYSTEM	:	

This is a decision on the petition filed January 24, 2005 under 37 CFR §1.102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **DISMISSED**.

M.P.E.P. §708.02, Section VIII, which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 CFR §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. The election may be made by applicant at the time of filing the petition for special status. Should applicant fail to include an election with the original papers or petition and the Office determines that a requirement should be made, the established telephone restriction practice will be followed. If otherwise proper, examination on the merits will proceed on claims drawn to the elected invention. If applicant refuses to make an election without traverse, the application will not be further examined at that time. The petition will be denied on the ground that the claims are not directed to a single invention, and the application will await action in its regular turn. Divisional applications directed to the nonelected inventions will not automatically be given special status based on papers filed with the petition in the parent application. Each such application must meet on its own all requirements for the new special status;

(C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. >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 >if the claims in the corresponding foreign application are of the same or similar scope to the claims in the U.S. application for which special status is requested<;

(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.

With respect to requirement (E), the petition does not contain a detailed discussion of the references to the extent required by 37 CFR 1.111(b) and (c). The petition provides a summary of each reference but contains only a general statement that none of the references disclose the limitations of the independent claims. The stated distinction merely excludes the basic infrastructure of the independent claims and thus is effectively directed to the entirety of the independent claims. However, a submission that the entirety of the independent claims is not disclosed by the prior art does not provide a sufficient distinction between the claimed invention and each of the cited references.

Because the petition fails to satisfy all of the criteria set forth above, the petition to make special is **DISMISSED**.

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

The application will remain in the status of a new application awaiting action in its regular turn.

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

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P.O. Box 1450
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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

MAILED
APR 26 2006
TECHNOLOGY CENTER 2100

In re Application of: Koji NAGATA
Application No. 10/851,085
Filed: May 24, 2004
For: STORAGE DEVICE AND INFORMATION MANAGEMENT SYSTEM

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the Request for Reconsideration filed June 6, 2005 (supplemented on June 21, 2005) on the petition to make special under 37 C.F.R. §102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, originally filed on January 24, 2005, and dismissed on April 28, 2005.

The Petition is **GRANTED**.

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

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

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

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

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

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

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

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

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

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

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

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NOV 1 0 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Kusase et al. :
Application No. 10/851,111 :
Filed: May 24, 2004 :
Attorney Docket No. 119830 :

This is a decision on the petition filed August 4, 2004, under 37 CFR 1.53(e)(2), to establish that page 26 of the specification was part of the originally filed application.

The application was filed on May 24, 2004. On July 22, 2004, a Notice was mailed stating that page 26 of the specification did not appear to be included as part of the application filed.

The present petition alleges that page 26 was deposited on May 24, 2004. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "spec/claims/abstract (29 pgs)" on May 24, 2004.[1]

The USPTO file for this application includes only 28 pages of specification, claims, and abstract and does not contain page 26. Based on the evidence submitted, the Office concludes the missing page was part of the application but were later misplaced. Therefore, the petition is **granted**.

The petition fee of $130 will be credited to petitioner's deposit account.

The Notice mailed July 22, 2004, was sent in error and is hereby vacated.

The Office of Initial Patent Examination will informed of the instant decision and will further process the application with a filing date of May 24, 2004, using the application papers filed on May 24, 2004, and the copy of page 26 of the specification filed with the petition on August 4, 2004.

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions

---

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

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MILLER THOMPSON, LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
TORONTO ON M5H 3S1 CA CANADA

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FEB 20 2008

OFFICE OF PETITIONS

In re Application of	:	
Elder et al.	:	
Application No. 10/851,133	:	DECISION ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 061769-0002	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 17, 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 an Amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

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

This matter is being referred to Technology Center AU 2624 for further examination on the merits.

Liana Walsh
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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Martin MOYNIHAN
c/o ANTHONY CASTORINA
SUITE 207
2001 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

In re Application of	:
Iris Pecker et al	:
Serial No.: 10/851,135	: PETITION DECISION
Filed: May 24, 2004	:
Attorney Docket No.: 27970	:

This is a decision on the PETITION FOR ACCEPTANCE OF COLOR DRAWINGS UNDER 37 CFR 1.84(a)(2). The petition was filed September 19, 2006. Entry of color drawings requires: 1) three sets of the color drawings, 2) a proper amendment to the specification indicating color photographs or drawings are present in the file, and 3) the required fee under 37 CFR 1.17(h).

A review of the application record indicates that the petition meets all of the requirements for acceptance of color drawings. This is not to be construed that all of the drawings are accepted, only that the color drawings are acceptable.

The petition is **GRANTED**.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile transmission at 571-273-8300.

John LeGuyader
Director, Technology Center 1600

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NOV 27 2006

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Martin MOYNIHAN
c/o ANTHONY CASTORINA
SUITE 207
2001 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

In re Application of	:
Iris Pecker et al	:
Serial No.: 10/851,135	: PETITION DECISION
Filed: May 24, 2004	:
Attorney Docket No.: 27970	:

This is a decision on the PETITION FOR ACCEPTANCE OF COLOR DRAWINGS UNDER 37 CFR 1.84(a)(2). The petition was filed September 19, 2006. Entry of color drawings requires: 1) three sets of the color drawings, 2) a proper amendment to the specification indicating color photographs or drawings are present in the file, and 3) the required fee under 37 CFR 1.17(h).

A review of the application record indicates that the petition meets all of the requirements for acceptance of color drawings. This is not to be construed that all of the drawings are accepted, only that the color drawings are acceptable.

The petition is **GRANTED**.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile transmission at 571-273-8300.

John LeGuyader
Director, Technology Center 1600

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STAAS & HALSEY LLP
1201 NEW YORK AVENUE NW, SUITE 700
WASHINGTON, DC 20005

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MAY 07 2009

OFFICE OF PETITIONS

In re Application of
Kunikazu TAKAHASHI, et al.
Application No. 10/851,160
Filed: May 24, 2004
Attorney Docket No. **1341.1206**

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 May 1, 2009, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 14, 2009 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2624 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.*

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UNITED STATES DEPARTMENT OF COMMERCE
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MCDERMOTT WILL & EMERY LLP
600 13TH STREET, NW
WASHINGTON, DC 20005-3096

Mail Date: 05/03/2010

Applicant	: Tomoko Sakakibara	: DECISION ON REQUEST FOR
Patent Number	: 7613312	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/851,181	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1317** 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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SADLER, BREEN, MORASCH & COLBY, P.S.
422 W. RIVERSIDE AVE, SUITE 424
SPOKANE, WA 99201

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OFFICE OF PETITIONS

In re Application of
Sheraizin et al.
Application No. 10/851,190
Filed: May 24, 2004
Attorney Docket No. SODE0010

DECISION ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 2, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 3, 2007. A Notice of Abandonment was mailed November 14, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $770.00, and (3) an adequate statement of unintentional delay.

A Power of Attorney was submitted on June 23, 2008 by the Assignee, revoking all previous powers of attorney, including to the petitioner. Accordingly, a courtesy copy of this decision will be mailed to the address listed on the petition; however, all future correspondence will be directed solely to the address of record until otherwise notified.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2622 for appropriate action by the Examiner in the normal course of business on the reply received.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: Daniel J. Swirsky
55 Reuven Street
Beit Shemesh, 99544 Israel

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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

In re Application of	:
Inada, et al.	:
Application No. 10/851,198	: DECISION ON PETITION
Filed: May 24, 2004	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 04676.0071-02000	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 30, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed non-provisional application set forth in the amendment filed with the 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 Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the prior-filed application on page one following the first sentence of the specification is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. 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 application as filed included incorporation by reference statements with respect to many of the prior applications, however; at least as to application 10/779,211, no incorporation by reference statement was present. Any amendment submitted on renewed petition cannot incorporate by reference an application not incorporated by reference on filing of the application.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition and either an Application Data Sheet signed in compliance with 37 CFR § 1.33(b) or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matter is required.

Petitioner should note that the rule changes set forth in 72 Fed. Reg. 46729 are not currently in effect. Any amendment or change made by petitioner in contemplation of these rules is completely voluntary on petitioner's part.

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 Kenya A. McLaughlin at (571) 272-3222.

Anthony Knight
Supervisor
Office of Petitions

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GARRETT & DUNNER LLP
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WASHINGTON DC 20001-4413

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MAY 30 2008

OFFICE OF PETITIONS

In re Application of :
Inada, et al. :
Application No. 10/851,198 : ON PETITION
Filed: May 24, 2004 :
Attorney Docket No. **04676.0071-02000** :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 17, 2008, to accept an unintentionally delayed claim under 35 U.S.C §120 for the benefit of priority to the prior –filed non-provisional application set forth in the amendment filed concurrently with the instant petition.

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.

The instant pending application was filed on May 24, 2004, and was pending at the time of the filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first page of the specification, 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 applications is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior filed 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 benefit of priority under 35 U.S.C. § 120 to the prior-filed non-provisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

Petitioner should note that the rule changes set forth in 72 Fed. Reg. 46729 are not currently in effect. Any amendment or change made by petitioner in contemplation of these rules is completely voluntary on petitioner's part.

It is noted that the petition fee was paid twice. The amount of $1,410.00 will be refunded, in due course.

Any inquiries concerning this decision may be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

This matter is being referred to Technology Center 1600, Art Unit 1618 for appropriate action on the amendment filed March 17, 2008, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §120 to the prior-filed non-provisional applications.

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Corrected Filing Receipt

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/851,198	05/24/2004	1618	770	04676.0071-02000	4	1

CONFIRMATION NO. 1006

CORRECTED FILING RECEIPT

22852
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

OC000000030108341

Date Mailed: 05/22/2008

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)

Makoto Inada, Tokushima-ken, JAPAN;
Nobuhiro Ikei, Tokushima-shi, JAPAN;
Hideji Nonomura, Tokushima-ken, JAPAN;
Yasuo Irie, Woburn, MA;

Assignment For Published Patent Application

Otsuka Pharmaceutical Co., Ltd.

Power of Attorney:

Donald Dunner--19073	Ford Farabow Jr--20630
Douglas Henderson--20291	Tipton Jennings--20645
Arthur Garrett--20338	Laurence Hefter--20827
Clair Mullen Jr--20348	Brian Brunsvold--22593
Richard Smith--20609	Albert Santorelli--22610

Domestic Priority data as claimed by applicant

This application is a DIV of 10/208,851 08/01/2002
which is a CIP of 09/928,434 08/14/2001 PAT 6,797,256

Foreign Applications

JAPAN 2001-070828 03/13/2001
JAPAN 2001-70828 03/13/2001

If Required, Foreign Filing License Granted: 07/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/851,198**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
Title

Composition for determining pyrimidine metabolizing activity

Preliminary Class

424

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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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 04/20/2010

Applicant	: Antti-Pekka Liedes	: DECISION ON REQUEST FOR
Patent Number	: 7587429	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,214	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **692** 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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WOMBLE CARLYLE SANDRIDGE & RICE
P.O. BOX 7037
ATLANTA, GA 30357-0037

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JAN 24 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Richard W. Phillips :
Application No. 10/851,248 :
Filed: May 24, 2004 :
Attorney Docket No. G137 1050.1

This is a decision on the petition, filed January 11, 2006 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

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

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

This matter is being referred to Technology Center AU 2859 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

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

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

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AUG 2 0 2007

OFFICE OF PETITIONS

In re Application of
Patrick Mark Hamill, et al.
Application No. 10/851,250
Filed: May 24, 2004
Attorney Docket No. 146712005300

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed March 30, 2007.

The request is **APPROVED**.

A review of the file record indicates that Morrison & Foerster, LLP: (1) does not have power of attorney in this patent application; and (2) has been employed or otherwise engaged in the proceedings in this patent application. In view of the present decision, Morrison & Foerster, LLP has/have been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

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

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

There is an outstanding Office action mailed June 22, 2007 that requires a reply from the applicant.

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

April M. Wise
Petitions Examiner
Office of Petitions

cc: RAJ S. DAVE', PHD
DARBY & DARBY, PC
1500 K STREET, NW
SUITE 250
WASHINGTON, DC 20005-1714

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/851,250	05/24/2004	Patrick Mark Hamill	146712005300

CONFIRMATION NO. 2686

OC000000025320765

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

Date Mailed: 08/13/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/30/2007.

- 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.

April Mruse

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

FORMER ATTORNEY/AGENT COPY

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H.C. PARK & ASSOCIATES, PLC
8500 LEESBURG PIKE
SUITE 7500
VIENNA, VA 22182

Mail Date: 04/20/2010

Applicant	: Yasuharu Onishi	: DECISION ON REQUEST FOR
Patent Number	: 7619357	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,251	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **9** 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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HUSCH BLACKWELL SANDERS LLP
4801 Main Street
Suite 1000
KANSAS CITY MO 64112

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DEC 04 2008

OFFICE OF PETITIONS

In re Application of
Thomas O. Simensen, et al.
Application No. 10/851,261
Filed: May 21, 2004
Attorney Docket No. 500569.10001

: DECISION ON PETITION UNDER
: 37 CFR 1.137(a) and 1.137(b)
:
:

This is a decision on the petitions under 37 CFR 1.137(a) and 1.137(b) to revive the above-identified application filed October 9, 2008.

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

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

The subject application was filed on May 21, 2004. A non-final Office action was mailed on April 25, 2006, allowing a shortened statutory period for reply of three months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). No response was received, and the application became abandoned on July 26, 2006. A Notice of Abandonment was mailed March 5, 2007.

TREATMENT UNDER 37 CFR 1.137(a)

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]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts the patent attorney, Patrick Burkhart, whom petitioner retained to prosecute the application, was negligent in his responsibilities and failed to timely respond to the non-final Office action and otherwise keep petitioner abreast of the application's status.

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 reasons petitioner's argument must necessarily fail are addressed below.

A successful petition under 37 CFR 1.137(a) requires that petitioner establish that entire delay in prosecuting the application was unavoidable—from the due date for the reply to the filing of a grantable petition under 37 CFR 1.137(a). In this case, the relevant date began July 25, 2006, and continues until the filing of a grantable petition. A review of USPTO databases reveals that Mr. Burkhart's registration is suspended and the alleged malfeasance and negligence of Mr. Burkhart relative to the prosecution of this application is unfortunate. The unavoidable standard requires, however, that petitioner establish that petition acted reasonably and prudently relative to the prosecution of the application for the entire period of delay. From the statements made in the petition, one may conclude that Mr. Burkhart displayed a propensity for neglecting the prosecution of the application long before petitioner took any decisive action relative to the application. Petitioner states that on October 19, 2007, petitioner discovered that the application was abandoned, yet petitioner did not file the instant petition until October 9, 2008, and did not attempt to revoke the power of attorney granted to Mr. Burkhart until October 9, 2008. Given the pattern displayed by Mr. Burkhart, it is reasonable to assume that, in the exercise of prudence relative to petitioner's most important business of prosecuting the patent application, that petitioner would have revoked power of attorney to Mr. Burkhart long before October 9, 2008, and would not have waited almost a year to file a petition to revive the application. It should be noted that petitioner is not being held responsible for the alleged negligence of Mr. Burkhart, but petitioner must be accountable for the period of delay in prosecuting the application when it was abundantly clear that the application was being mishandled and, indeed, abandoned. The facts as indicated in the petition do not demonstrate that petitioner treated the prosecution of this application as its most important business or that petitioner remained prudent and diligent relative to the same for the entire period of delay such that the delay can be deemed unavoidable. The petition under 37 CFR 1.137(a) is dismissed, accordingly.

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[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

TREATMENT UNDER 37 CFR 1.137(b)

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

The above-identified application has been abandoned for an extended period of time. The 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 form 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 Patent and Trademark Office

Deposit account 11-0160 will be charged $810.00 for the instant petition fee.

The application file is being directed to Technology Center Group Art Unit 3753 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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SAMPSON & ASSOCIATES, P.C.
50 CONGRESS STREET
BOSTON, MA 02109

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In re Application of	:	
Jim Hoffey	:	
Application No. 10/851,262	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO MAKE SPECIAL UNDER
Attorney Docket No. 1170.002	:	37 CFR 1.102(d)
	:	

This is a decision on the petition under 37 CFR §1.102(d), filed October 31, 2005, to make the above-identified application special based on actual infringement as set forth in M.P.E.P. § 708.02, Section II.

The petition is **GRANTED.**

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

> (A) That there is an infringing device or product actually on the market or method in use;
>
> (B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
>
> (C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.
>
> Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition complies with all the above stated requirements. Accordingly, the above-identified application has been accorded "special" status.

After the decision is mailed, deposit account No. 50-0734 will be charged $130.00 for the petition fee under 37 CFR 1.102(d).

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

This matter is being referred to Technology Center Art Unit 2632 for action on the merits commensurate with this decision.

David Bucci
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

HUSCH BLACKWELL SANDERS LLP
4801 Main Street
Suite 1000
KANSAS CITY MO 64112

In re Application of
Thomas O. Simensen, et al.
Application No. 10/851,264
Filed: May 21, 2004
Attorney Docket No. 500569.10002

: DECISION ON PETITION UNDER
: 37 CFR 1.137(a) and 1.137(b)
:
:

This is a decision on the petitions under 37 CFR 1.137(a) and 1.137(b) to revive the above-identified application filed October 9, 2008.

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

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

The subject application was filed on May 21, 2004. A non-final Office action was mailed on October 5, 2005, allowing a shortened statutory period for reply of three months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). No response was received, and the application became abandoned on January 6, 2006. A Notice of Abandonment was mailed May 22, 2006.

TREATMENT UNDER 37 CFR 1.137(a)

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]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts the patent attorney, Patrick Burkhart, whom petitioner retained to prosecute the application, was negligent in his responsibilities and failed to timely respond to the non-final Office action and otherwise keep petitioner abreast of the application's status.

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 reasons petitioner's argument must necessarily fail are addressed below.

A successful petition under 37 CFR 1.137(a) requires that petitioner establish that entire delay in prosecuting the application was unavoidable—from the due date for the reply to the filing of a grantable petition under 37 CFR 1.137(a). In this case, the relevant date began January 6, 2006, and continues until the filing of a grantable petition. A review of USPTO databases reveals that Mr. Burkhart's registration is suspended and the alleged malfesance and negligence of Mr. Burkhart relative to the prosecution of this application is unfortunate. The unavoidable standard requires, however, that petitioner establish that petition acted reasonably and prudently relative to the prosecution of the application for the entire period of delay. From the statements made in the petition, one may conclude that Mr. Burkhart displayed a propensity for neglecting the prosecution of the application long before petitioner took any decisive action relative to the application. Petitioner states that on October 19, 2007, petitioner discovered that the application was abandoned, yet petitioner did not file the instant petition until October 9, 2008, and did not attempt to revoke the power of attorney granted to Mr. Burkhart until October 9, 2008. Given the pattern displayed by Mr. Burkhart, it is reasonable to assume that, in the exercise of prudence relative to petitioner's most important business of prosecuting the patent application, that petitioner would have revoked power of attorney to Mr. Burkhart long before October 9, 2008, and would not have waited almost a year to file a petition to revive the application. It should be noted that petitioner is not being held responsible for the alleged negligence of Mr. Burkhart, but petitioner must be accountable for the period of delay in prosecuting the application when it was abundantly clear that the application was being mishandled and, indeed, abandoned. The facts as indicated in the petition do not demonstrate that petitioner treated the prosecution of this application as its most important business or that petitioner remained prudent and diligent relative to the same for the entire period of delay such that the delay can be deemed unavoidable. The petition under 37 CFR 1.137(a) is dismissed, accordingly.

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[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

TREATMENT UNDER 37 CFR 1.137(b)

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

The above-identified application has been abandoned for an extended period of time. The 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 form 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 Patent and Trademark Office

Deposit account 11-0160 will be charged $810.00 for the instant petition fee.

The application file is being directed to Technology Center Group Art Unit 3749 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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 KIEWIT
5901 THIRD ST SOUTH
ST PETERSBURG FL 33705

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JUL 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Philipp, Harald	:	
Application No. 10/851,269	:	DECISION GRANTING PETITION
Filed: May 21, 2004	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. PTP	:	

This is a decision on the petition, filed March 6, 2006, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on May 10, 2005. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

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

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of October 26, 2006, accompanies this decision on petition.

This matter is being referred to Technology Center Art Unit 2629 for examination in due course.

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

Liana Chase
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/851,269	05/21/2004	Harald Philipp	PTP

CONFIRMATION NO. 1246

20191
DAVID KIEWIT
5901 THIRD ST SOUTH
ST PETERSBURG, FL 33705

Date Mailed: 07/17/2006

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 10/26/2006.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282. Questions regarding publications of patent applications should be directed to the patent application publication hotline at (703) 605-4283 or by e-mail pgpub@uspto.gov.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

In re Application of
Adam Leslie Clark
Application No. 10/851,276
Filed: May 20, 2004
For: SYSTEM AND METHOD FOR ENCODING AND DECODING VIDEO

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed August 12, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

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

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

Mail Date: 04/21/2010

Applicant	: Moinul H. Khan	: DECISION ON REQUEST FOR
Patent Number	: 7590864	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,305	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1092** 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	:	
Muralitharan, et al.	:	
Application No. 10/851,306	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO WITHDRAW
Attorney Docket No. 5306.P115	:	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 25, 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 April Wise at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: Sam Campbell
Campbell, Stephenson Asocolese, LLP
4807 Spicewood Spring Road
Bldg. 4, Suite 201
Austin, TX 78759

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

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OFFICE OF PETITIONS

In re Application of :
Li et al. :
Application No. 10/851,307 : ON PETITION
Filed: May 21, 2004 :
Title: Hybrid DC Offset Cancellation Scheme for Wireless Receiver

This is a decision on the petition under 37 CFR 1.137(b), filed September 18, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply to the non-final Office Action of February 16, 2006. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on May 17, 2006. A Notice of Abandonment was mailed on November 7, 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 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

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12400 WILSHIRE BOULEVARD, 7th FLOOR
LOS ANGELES CA 90025-1030

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OFFICE OF PETITIONS

In re Application of
MURALITHARAN, et al.
Application No. 10/851,310
Filed: May 21, 2004
Attorney Docket No. 005306.P116

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 31, 2006.

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

A review of the file record indicates that the power of attorney to Marina Portnova and all attorneys associated have been revoked by the assignee of the patent application on September 11, 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 Monica A. Graves at 571-272-7253.

for David Bucci
Petitions Examiner
Office of Petitions

cc: **CAMPBELL STEPHENSON ASOCOLESE LLP**
4807 SPICEWOOD SPRINGS RD.
BLDG. 4, SUITE 201
AUSTIN TX 78759

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/851,310	05/21/2004	Caroline Muralitharan	005306.P116

CONFIRMATION NO. 9926

OC000000020693682

08791
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

Date Mailed: 10/04/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/11/2006.

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

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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Technology Center 2100

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12400 WILSHIRE BOULEVARD
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In Re Application:	:	
Richard Jacob J. Lee	:	
Appl No. 10/851, 311	:	WITHDRAW FROM ISSUE
Filed: May 21, 2004	:	FEE NOT PAID
Attorney Docket No.: 2964P021	:	

For: MESSAGING PROTOCOL FOR PROCESSING MASSAGES WITH ATTACHMENTS BY INSERTING INTO A FIELD OF THE MESSAGE A UNIQUE PROPERTY OF THE ATTACHING ENTITY

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(a).

The above-identified application is withdrawn from issue before payment of the issue fee to determine patentability.

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

The application is being forwarded to the examiner for action.

Paul Sewell
Acting Director, Technology Center 2100
Computer Architecture, Software
And Electronic Commerce

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OFFICE OF PETITIONS

In re Application of

LAIK, et al.
Application No. 10/851,312
Filed: May 21, 2004
Attorney Docket No. 005306.P113

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 13, 2006.

The request is **NOT APPROVED**.

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

The 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 Monica A. Graves at 571-272-7253.

for David Bucci
Petitions Examiner
Office of Petitions

cc: **CSA LLP**
4807 SPICEWOOD SPRINGS RD.
BLDG. 4, SUITE 201
AUSTIN, TX 78759

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/851,312	05/21/2004	Pascal Laik	005306.P113

CONFIRMATION NO. 9929

OC000000020705160

08791
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

Date Mailed: 10/04/2006

NOTICE REGARDING POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/05/2006 . The Power of Attorney in this application is not accepted for the reason(s) listed below:

- The Power of Attorney is from an assignee and the Certificate required by 37 CFR 3.73(b) has not been received.

Does not include a complete chain of title or the current reel/frame number.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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CAMPBELL STEPHENSON LLP
11401 CENTURY OAKS TERRACE
BLDG. H, SUITE 250
AUSTIN, TX 78758

Mail Date: 04/26/2010

Applicant	: Pascal Laik	: DECISION ON REQUEST FOR
Patent Number	: 7617239	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/851,312	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **268** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

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MAR 0 5 2007

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Lee, et al. :
Application No. 10/851,317 :
Filed: May 21, 2004 :
Attorney Docket No. 062891.1271 :
For: SYSTEM AND METHOD FOR VOICE SCHEDULING AND MULTIMEDIA ALERTING

This is a decision on the petition under 37 CFR 1.181, filed February 2, 2007, to withdraw the holding of abandonment in the above-identified application.

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

The Office contended that the above-identified application became abandoned for failure to submit the issue fee, publication fee, and a completed PTOL-85B in response to the September 20, 2006 Notice of Allowance and Fee(s) Due, which set a three month non-extendable period for reply. No reply being received, the Office contended that this application became abandoned on December 21, 2006. A Notice of Abandonment was mailed on January 23, 2007.

Petitioners allege that the September 20, 2006 Notice of Allowance and Fee(s) Due was not received. It is assumed that petitioner intends to assert that the September 20, 2006 Notice of Allowability was not received, either.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[1]

[1] See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioners have submitted a copy of the docket record where the requirements would have been entered had the September 20, 2006 Notice been received. In addition, practitioner referenced the docket record in the petition and stated that a review of the file jacket and docket records for the September 20, 2006 Notice was fruitless.

Petitioners have established non-receipt. The petition is **granted**, the holding of abandonment is withdrawn, and the January 23, 2007 Notice of Abandonment is **vacated**.

After the mailing of this decision, the application will be returned to Technology Center A.U. 2617 for the re-mailing of the September 20, 2006 Notice of Allowance and Fee(s) Due and Notice of Allowability with a new period set for reply.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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P.O. Box 1450
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SMITH, GAMBRELL & RUSSELL, LLP
1850 M STREET, N.W., SUITE 800
WASHINGTON DC 20036

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OFFICE OF PETITIONS

In re Application of	:	
Yuji Kamikawa	:	DECISION DISMISSING
Application No. 10/851,335	:	PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 33082 M 088.1	:	

This is a decision on the petition filed October 12, 2004, requesting that the above-identified application be accorded a filing date of May 24, 2004, with pages 6, 7 and 66 of the specification as part of the original disclosure.

On May 24, 2004, applicant filed the above-identified application. On August 13, 2004, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice), stating that the application was accorded a filing date of May 24, 2004; however, it appeared that pages 6, 7 and 66 of the specification were omitted.

In response, on October 12, 2004, applicant submitted the present petition, the petition fee, and copies of pages 6, 7 and 66 of the specification. In the petition, Michael A. Makuch states that upon reviewing the law firm's file, he acknowledges that pages 6, 7, and 66 were inadvertently omitted from the application papers filed on May 24, 2004.

Upon review of the record, pages 6, 7 and 66 of the specification have not been located in the official file. It is noted that the transmittal identified this application as a divisional application of prior application No. 09/888,380, filed June 26, 2001, and specifically incorporated by reference the disclosure of the prior application.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

> . . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a

> statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied).

Obviously, in view of the incorporation by reference of Application No. 09/888,380, pages 6, 7 and 66 of the specification are not new matter if they were part of the disclosure of Application No. 09/888,380. If applicant desires that pages 6, 7 and 66 of the specification be added to the application, an amendment should be filed prior to the first action on the merits, which will be considered by the primary examiner.

Accordingly, the Notice mailed on August 13, 2004, was correct in stating that pages 6, 7 and 66 of the specification appeared to have been omitted. Therefore, the requirement for the omitted pages of specification was proper and will not be withdrawn.

Accordingly, the petition is dismissed.

The $130.00 petition fee will not be refunded because the petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

The Office of Initial Patent Examination is directed to process the application with a filing date of May 24, 2004, using the application papers filed on that date. Pages 6, 7 and 66 of the specification submitted with this petition will not be entered at this time.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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
10/851,340	05/21/2004	1732	1274	57257US002	4	48	2

CONFIRMATION NO. 3393

CORRECTED FILING RECEIPT

OC000000013682679

32692
3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

Date Mailed: 09/01/2004

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)

Bruce B. Wilson, Woodbury, MN;
Roger J. Stumo, Shoreview, MN;
Stanley C. Erickson, Scandia, MN;
William L. Kopecky, Hudson, WI;
James C. Breister, Oakdale, MN;

Assignment For Published Patent Application

3M Innovative Properties Company

Power of Attorney: The patent practitioners associated with Customer Number **32692**.

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/21/2004

The number of your priority application, to be used for filing abroad under the Paris Convention is,
US10/851,340

Projected Publication Date: 11/24/2005

Non-Publication Request: No

Early Publication Request: No

Title

Lubricated flow fiber extrusion

Preliminary Class

264

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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EDWARD J. LYNCH
DUANE MORRIS LLP
ONE MARKET
SPEAR TOWER, STE. 2000
SAN FRANCISCO CA 94105

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APR 14 2005

OFFICE OF PETITIONS

In re application of :
Fred H. Burbank et al :
Application No. 10/851,342 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No. R0367-03001 :

This is a decision on the petition under 37 CFR 1.182, filed December 2, 2004.

The petition is **DISMISSED** as moot.

In this regard, it is unnecessary to file a petition under 37 CFR 1.182 to withdraw claim of priority since "the examiner should consider whether any new prior art may now be available if a benefit claim is deleted." See MPEP 201.11.

This matter is being referred to Technology Center AU 3739.

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

Karen Creasy

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

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COCHRAN FREUND & YOUNG LLC
2026 CARIBOU DR
SUITE 201
FORT COLLINS CO 80525

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OFFICE OF PETITIONS

In re Application of	:	
Marcia L. BAKER	:	
Application No. 10/851,348	:	DECISION ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. ALIC.01USU1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 11, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of November 11, 2008 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on January 12, 2009. *See* MPEP 1214.06.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the Board of Patent Appeals and Interferences decision of November 11, 2008 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178

(October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

This application is being referred to Technology Center AU 2841 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **E. RUSSELL TARLETON**
701 FIFTH AVENUE
SUITE 5400
SEATTLE, WASHINGTON 98104

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OFFICE OF PETITIONS

ANTONELLI, TERRY, STOUT & KRAUS
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 2209-3873

In re Application of	:	
Tetsuo Adachi et al	:	
Application No. 10/851,350	:	ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 501.37635CC4	:	

This is a decision on the petition, filed October 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 December 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 2812 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

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

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. _____

Date : October 6, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Tetsuo Adachi et al
Application No. :10/851,350
Filed :May 24, 2004

The above-identified application has been assigned Patent No. 7,118,964 and an issue date of October 10, 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 October 10, 2006:

"All reference to Patent No. 7,118,964 to Tetsuo Adachi of Japan for NON-VOLATILE SEMICONDUCTOR MEMORY AND METHOD OF MAKING SAME, AND SEMICONDUCTOR DEVICE AND METHOD OF MAKING DEVICE appearing in the Official Gazette of October 10, 2006 should be deleted since no patent was granted."

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

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89

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1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Tetsuo Adachi et al	:	
Application No. 10/851,350	:	
Filed: May 24, 2004	:	
Attorney Docket No. 501.37635CC4	:	

This is a decision on the petition, filed January 24, 2007, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

If, the above-identified application is again allowed, petitioner may request that the issue fee paid on January 12, 2007 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 2812 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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KENYON & KENYON
Suite 600
333 W. San Carlos Street
San Jose, CA 95110-2711

Mail Date: 04/21/2010

Applicant	: Martin Chen	: DECISION ON REQUEST FOR
Patent Number	: 7571078	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,361	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1227** 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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Fernandez & Associates, LLP
PO Box D
Menlo Park, CA 94026-6402

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OFFICE OF PETITIONS

In re Application of	:	
Derek A. Palma, et al.	:	
Application No. 10/851,385	:	DECISION ON PETITION
Filed: May 22, 2004	:	TO WITHDRAW
Attorney Docket No. ORC_1000	:	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 31, 2008.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to Fernandez & Associates, LLP has been revoked by the assignee of the patent application on October 27, 2008. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Law Office of Christopher J Brokaw, PC**
P.O. Box 321059
Los Gatos, CA 95032

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Valeo, Inc.
Intellectual Property Department
4100 North Atlantic Boulevard
Auburn Hills MI 48326

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In re Application of	:	
Hu	:	
Application No. 10/851,392	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO WITHDRAW
Attorney Docket No. RUS0169	:	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).

The request was signed by Thomas P. Liniak on behalf of himself.

All other attorneys/agents associated with this application remain of record.

The correspondence address of record remains unchanged.

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

April M. Wise
Petitions Examiner
Office of Petitions

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Townshend et al.	:	
Application No. 10/851,405	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 03-1053	:	

This is a decision on the petition filed on July 19, 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 present nonprovisional application is the subject of an application filed in an eighteen-month publication country on May 23, 2005. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

(1) the required reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;

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

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

The present petition complies 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 Corrected Filing Receipt, which sets forth the projected publication date of November 24, 2005, accompanies this decision on petition.

This matter is being referred to Technology Center Art Unit 3713.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

Mail Date: 04/21/2010

Applicant	: Brent Townshend	: DECISION ON REQUEST FOR
Patent Number	: 7657220	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,405	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1539** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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FORTKORT & HOUSTON P.C.
9442 N. CAPITAL OF TEXAS HIGHWAY
ARBORETUM PLAZA ONE, SUITE 500
AUSTIN, TX 78759

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JUL 28 2006
OFFICE OF PETITIONS

In re Application of	:
Turner, et al.	: DECISION ON PETITION
Application No. 10/851,423	:
Filed: May 21, 2004	:
Docket No.: INFN006US0	:

This is a decision on the petition to revive under 37 CFR 1.181, filed March 27, 2006.

This application was held abandoned February 9, 2006 in response to a request for express abandonment submitted February 9, 2006. Notice of Abandonment was mailed February 13, 2006.

Petitioners assert that the request for express abandonment was not submitted by either the applicant(s) or the attorney of record in the above-identified application, and, thus, was improperly entered.

Petitioners arguments have been carefully considered and found convincing. The request for express abandonment will remain in the application file, but will not be entered.

Accordingly, in view of the evidence presented, the petition to withdraw the holding is **GRANTED**; the Notice of Abandonment is hereby **VACATED**; and, the Notice of Abandonment is **WITHDRAWN**.

The application file is being forwarded to the Office of Initial Patent Examination for further processing, and, if necessary, reprocessing of examination fees.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 020605

Elaine C. Stracker J.D., PH.D.
V.P. Intellectual Property
Alexza Molecular Delivery Corporation
1001 East Meadow Circle
Palo Alto, CA 94303

FEB 10 2005

In re Application of:	:	
Hale *et al.*	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Serial No.: 10/851,429	:	
Filed: May 20, 2004	:	
Attorney Docket No.: **00071.01CIP**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed December 16, 2004.

The request is **DISMISSED** as moot.

A review of the application file record reveals a proper revocation and power of attorney to the attorneys of Alexza Molecular Delivery Corporation was filed on December 16, 2004. As such, the power of attorney for the attorneys and agents requesting withdrawal has already been revoked. Accordingly, the present request is moot, and must be dismissed.

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

Inquiries related to this decision should be directed to Lissi Marquis at (571) 272-1596.

Lissi Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: IP Department (Alexza Molecular Delivery Corporation)
1001 East Meadow Circle
Palo Alto, CA 94303

UNITED STATES PATENT AND TRADEMARK OFFICE

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AIR LIQUIDE
SUITE 1800
2700 POST OAK BLVD.
HOUSTON, TX 77056

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FEB 07 2007

OFFICE OF PETITIONS

In re Application of :
Frederic Camy-Peyret :
Application No. 10/851,431 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No. Serie 6289 :

This is a decision in response to the petition, filed July 17, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is DISMISSED AS MOOT.

The petition is filed in response to a Notice of Abandonment mailed May 19, 2006, stating that the application became abandoned for a failure to response to an Office action mailed October 4, 2005.

A review of the record discloses that a non-final Office action was mailed on October 4, 2005. However, by a non-final Office action mailed January 12, 2006, a new shortened statutory period for reply to the Supplemental Detail Action was set to expire "3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION." It is noted that applicant's response filed May 16, 2006 used a Certificate of Mailing under 37 CFR 1.8 dated May 12, 2006, and included an appropriate one-month petition for extension of time.

In view of the above, no abandonment existed. Accordingly, the petition under 37 CFR 1.137(b) is unnecessary and the $1,500 petition fee is being refunded to counsel's deposit account.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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ExxonMobil Chemical Company
Law Technology
P.O. Box 2149
Baytown, TX 77522-2149

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SEP 29 2006

OFFICE OF PETITIONS

In re Application of

Richard T. Stell et al.
Application No. 10/851,434
Filed: May 21, 2004
Attorney Docket No. 2004B045

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed June 8, 2006.

The request is **NOT APPROVED**.

A review of the file record indicates that Linda E. Horner does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

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

Amelia Au
Petitions Examiner
Office of Petitions

cc: **Sterne, Kessler, Goldstein, & Fox P.L.L.C.**
1100 New York Avenue, N.W.
Washington D.C. 20005

UNITED STATES PATENT AND TRADEMARK OFFICE

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MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

MAILED

JUN 09 2009

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Jose H. Durazo et al :
Application No. 10/851,442 :
Filed: May 21, 2004 :
Attorney Docket No. 60001.0256USU1/301753.01

This is a decision on the petition, filed June 8, 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 May 4, 2009 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 2176 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, PC
Attn: Patent Intake Customer No. 30623
One Financial Center
Boston, MA 02111

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OFFICE OF PETITIONS

In re Application of	:	
Kevin G. Pinney et al.	:	
Application No.10/851,445	:	DECISION ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 18217-528 CIP	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 16, 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 July 14, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed April 14, 2008. Accordingly, the date of abandonment of this application is July 15, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $720.00, and (2) the petition fee of $770.00; 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 so notify the Office.

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

The change of address filed with this petition has not been signed by an attorney of record. Therefore, the change of address is not acceptable. Accordingly, as mentioned in the paragraph above the proper power of attorney must be filed, if the assignee is changing the power of attorney they must also comply with 37 CFR 3.73(b).

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

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

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: OXIGENE, INC.
C/O LAW OFFICES OF KAREN E. FLICK
P.O. BOX 515
EL GRANDA, CA 94108-0515

PART B - FEE(S) TRANSMITTAL

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

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

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

30623 7590 04/14/2008

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ATTN: PATENT INTAKE CUSTOMER NO. 30623
ONE FINANCIAL CENTER
BOSTON, MA 02111

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

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

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/851,445	05/21/2004	Kevin G. Pinney	18217-528 CIP	1654

TITLE OF INVENTION: CHROMENE-CONTAINING COMPOUNDS WITH ANTI-TUBULIN AND VASCULAR TARGETING ACTIVITY

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	$720	$300	$0	$1020	07/14/2008

EXAMINER	ART UNIT	CLASS-SUBCLASS
DENTZ, BERNARD I	1625	514-456000

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)
Baylor University	Waco, Texas
OXiGENE, Inc.	Waltham, Massachusetts

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 submitted:
☒ Issue Fee
☒ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): **(Please first reapply any previously paid issue fee shown above)**
☐ A check is enclosed.
☒ Payment by credit card. Form PTO-2038 is attached.
☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 50-4279 (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)
☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

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 /Karen E. Flick/ Date 16 July 2008

Typed or printed name Karen E. Flick Registration No. 44,111

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.

Atty. Dkt. No. OXGN-028.US2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kevin PINNEY, et al.
Title:	Chromene-Containing Compounds with Anti-Tubulin and Vascular Targeting Activity
Appl. No.:	10/851,445
Filing Date:	21 May 2004
Examiner:	Bernard DENTZ
Art Unit:	1625
Confirmation Number:	1654

PETITION UNDER 37 CFR § 1.137(b)FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY

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

Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to the notice of allowance mailed 14 April 2008 by the United States Patent and Trademark Office.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION and acceptance of the enclosed issue fee payment.

Enclosed please find:

- $770.00 small entity Petition Fee under 37 CFR § 1.17(m). Small entity status was previously established.

- A reply to the 14 April 2008 Notice of Allowance in the form of:
  - an Issue Fee Transmittal, including associated issue and publication fees;
  - a completed Form PTO/SB/122 Change of Correspondence Address; and
  - a completed Form PTO/SB/47 Fee Address Indication Form.

- Since this application was filed on or after 8 June 1995, no terminal disclaimer is required.

- The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR § 1.137(b) was unintentional.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-4279. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-4279. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-4279.

Respectfully submitted,

By

/Karen E. Flick/

Date 16 July 2008

Karen E. Flick
Attorney for Applicant
Registration No. 44,111

Customer Number: 75605
Telephone: (650) 284-5575
Facsimile: (650) 284-5596

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Sheridan Ross PC
1560 Broadway
Suite 1200
Denver, CO 80202

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JAN 07 2009

OFFICE OF PETITIONS

In re Application of	:	
Herbert L. Hohl, III et al.	:	
Application No. 10/851,464	:	DECISION ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 4233-117	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 5, 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 4, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed August 4, 2008. Accordingly, the date of abandonment of this application is November 5, 2008. A Notice of Abandonment was mailed on November 17, 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. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

Applicant should note that the issue fee payment applied on November 5, 2008 included an increase due to our fee changes that were effective as of October 2, 2008.

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

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

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SEP 18 2007

ALAN J. HOWARTH
P.O. BOX 1909
SANDY UT 84091-1909

In re Application of	:
Youngro Byun et al	:
Serial No.: 10/851,477	: PETITION TO MAKE SPECIAL
Filed: May 21, 2004	:
Attorney Docket No.: T10379	:

This is in response to applicants' petition filed June 21, 2004, 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.

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

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

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

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the general Office facsimile number, 571-273-8300.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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AUG 03 2009

OFFICE OF PETITIONS

In re Patent No. 7,417,070	: DECISION ON REQUEST
Phares et al.	: FOR
Issue Date: August 26, 2008	: RECONSIDERATION OF
Application No. 10/851,481	: PATENT TERM ADJUSTMENT
Filed: May 24, 2004	:
Attorney Docket No. 080618-0333	:
Title: Compounds and Methods	:
For Delivery of Prostacyclin	:
Analogs	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705" filed October 22, 2008. Patentees request that the patent term adjustment indicated in the patent be corrected from five hundred thirty-five (535) to seven hundred ninety-seven (797) days.

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

On August 26, 2008, the above-identified application matured into U.S. Patent No. 7,417,070. The instant request for reconsideration was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 535 days. Patentees request correction of the patent term adjustment to increase the patent term adjustment to 797 days in that pursuant to 35 U.S.C. § 154(b) the Office failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR 1.702(b).

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 §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 460 days and the period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), of 337 days do not overlap as these periods do not occur on the same day. It is noted petitioner includes the 198 day as overlapping with the 460 day delay.

The period of reduction of 0 days for applicant delay is not in dispute.

Specifically, patentees maintain that the total period of Office delay is the sum of the period of Three Years Delay (460 days) and the period of Examination Delay (337 days) to the extent that these periods of delay are not overlapping. Patentees maintain that as these periods do not occur on the same calendar day they do not overlap. As such, patentees assert entitlement to a patent term adjustment of 797 days (460 + 337 - 0).

The office finds the following: 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 during which patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704.

It is noted that the instant patent issued 3 years and 460 days after its filing date. However, the Office contends that the entire period of 460 days overlaps with the 535 days of patent term adjustment accorded prior to the issuance of the patent. Accordingly, no additional period of adjustment was entered for Office delay for Office issuance of the patent more than 3 years after the filing date of the application. The patent properly issued with a revised patent term adjustment of 535 days.

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

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

Likewise, 37 CFR 1.703(f) provides that:

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

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

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

Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004).

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

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

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

be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[1]

As such, the period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the filing date of the application.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office until the issuance of the patent, May 24, 2004 to August 26, 2008(except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)). The Office did not delay 535 days and then an additional 460 days. The 535 day delay contributed to the 460 day delay. Accordingly, 535 days of patent term adjustment (not 337 and 460 days) was properly entered since the period of delay of 460 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 535 days attributable to grounds specified in § 1.702(a)(1). Entry of both periods is not warranted. 535 days is determined to be the actual number of days that the issuance of the patent was delayed, considering the 460 days over three years.

Accordingly, at issuance, the patent issued with a revised patent term adjustment of 535 days (535 - 0 days).

In view thereof, the instant patent is not entitled to further adjustment.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

---

[1] The AIPA is title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948), which was incorporated and enacted as law as part of Pub. L. 106-113. The Conference Report for H.R. 3194, 106th Cong. 1st Sess. (1999), which resulted in Pub. L. 106-113, does not contain any discussion (other than the incorporated language) of S. 1948. A section-by-section analysis of S. 1948, however, was printed in the Congressional Record at the request of Senator Lott, See 145 Cong. Rec. S14,708-26 (1999)(daily ed. Nov. 17, 1999).

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

Kery Fries

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

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MAR 09 2010

In re Patent No. 7,417,070	
Phares et al.	DECISION ON REQUEST FOR
Issue Date: August 26, 2008	RECONSIDERATION OF
Application No. 10/851,481	PATENT TERM ADJUSTMENT
Filed: May 24, 2004	AND NOTICE OF INTENT
Attorney Docket No. 080618-0333	TO ISSUE CERTIFICATE OF
Title: Compounds and Methods	CORRECTION
For Delivery Of Prostacyclin	
Analogs	

This is a decision on the petition filed on October 2, 2009, which is being treated as a petition under 37 CFR 1.705(d) and 37 CFR 1.181 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred ninety-seven (797) 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 seven hundred ninety-seven (797) days is **GRANTED.**

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by seven hundred ninety-seven (797) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). The additional $400.00 fee for the 1.181 has also been assessed.

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

/Kery Fries/

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

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,417,070 B2

DATED : **August 26, 2008** **DRAFT**

INVENTOR(S) : Phares 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 535 days

Delete the phrase "by 535 days" and insert – by 797 days--

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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Shemwell Gregory & Courtney LLP
Suite 201
4880 Stevens Creek Boulevard
San Jose CA 95129

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SEP 01 2004
OFFICE OF PETITIONS

In re Application of :
Stojanovic et al. : NOTICE
Application No. 10/851,505 :
Filed: May 21, 2004 :
Attorney Docket No. RBS2.P003 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c), filed July 27, 2004.

37 CFR 1.28(c) states: "The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full." Accordingly, the fee deficiency submission under 37 CFR 1.28 is hereby **accepted**.

The change of status to a large entity has been entered and made of record.

This application will be referred to Technology Center Art Unit 2819 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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MAR 17 2010

In re Application of	:	
Jesse Clay Satterfield et al.	:	
Application No. 10/851,506	:	DECISION ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No.	:	
60001.0257USU1/301754.01		

This is a decision on the petition, filed January 30, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the non-final Office action mailed June 19, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on January 21, 2009.

Petitioner asserts that the Office action dated June 19, 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;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

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

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 2176 for re-mailing the Office action of June 19, 2008. The period for reply will run from the mailing date of the Office action.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Graciela G. Cowger
Marger Johnson & McCollom, P.C.
1030 S.W. Morrison Street
Portland, OR 97205

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JAN 05 2005

OFFICE OF PETITIONS

In re Application of	:
Woodall, et al.	: DECISION REFUSING STATUS
Application No. 10/851,523	: UNDER 37 CFR 1.47(a)
Filed: May 20, 2004	:
Atty. Dkt. No.: 7293-77	:
For: SYSTEM AND METHOD FOR	:
IMPROVING PERFORMANCE OF AN	:
ANALOG TO DIGITAL CONVERTER	:

This decision is in response to the petition under 37 CFR 1.47(a), filed November 15, 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 legal representative of the deceased inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed May 20, 2004 without an executed oath or declaration. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed July 20, 2004 requiring an executed oath or declaration and a surcharge.

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

The instant petition lacks requirements (1) set forth above.

As to item (1) set forth above. Petitioners allege that inventor G. Finn Wredenhagen refused the sign the declaration after having been presented with the application papers. The petition refers to emails in which the application papers appear to have been attached. There is no evidence to establish that the inventor received the emails, opened the attachments, and thereafter refused to execute the declaration. The petition also references a letter sent to the non-signing inventor at the non-signing inventor's last known address. There is no indication that the letter enclosed copies of the application papers (specification, including claims, drawings, and oath or declaration). The letter merely requests the non-signing inventor's signature on documents.

Before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. Petitioners have failed to establish that the non-signing inventor received a copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration. Any renewed petition should be accompanied by evidence to establish that the non-signing inventor was sent a complete copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the declaration. Petitioner may wish to provide the Office copies of letters sent to the inventors indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventor receives the application papers and requests to execute the oat or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

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

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

By facsimile: (703) 308-6916

By hand:

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to the undersigned at (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

Graciela G. Cowger
Marger Johnson & McCollom, P.C.
1030 S.W. Morrison Street
Portland, OR 97205

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JUN 16 2005

OFFICE OF PETITIONS

In re Application of	:
Woodall, et al.	: DECISION GRANTING STATUS
Application No. 10/851,523	: UNDER 37 CFR 1.47(a)
Filed: May 20, 2004	:
Atty. Dkt. No.: 7293-77	:
For: SYSTEM AND METHOD FOR	:
IMPROVING PERFORMANCE OF AN	:
ANALOG TO DIGITAL CONVERTER	:

This decision is in response to the renewed petition under 37 CFR 1.47(a), filed March 7, 2005.

The petition is **GRANTED**.

Petitioner has shown that inventor Finn G. Wredenhagen has refused to execute the declaration for the above-identified application after having been presented with the application papers.

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

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

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

Telephone inquiries regarding this decision should be directed to the undersigned at (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

Finn G. Wredenhagen
79 Tidefall Drive
Toronto, ON
MIW IJI
CANADA

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JUN 16 2005

OFFICE OF PETITIONS

In re Application of :
Woodall, et al. :
Application No. 10/851,523 : LETTER
Filed: May 20, 2004 :
Atty. Dkt. No.: 7293-77 :
For: SYSTEM AND METHOD FOR :
IMPROVING PERFORMANCE OF AN :
ANALOG TO DIGITAL CONVERTER :

Dear Sir:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3205. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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Paper No:__

OSTROLENK FABER
GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

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OFFICE OF PETITIONS

In re Application of	:	
Settele	:	DECISION
Application No. 10/851,536	:	
Filing Date: 21 May, 2004	:	
Attorney Docket No.: P/1941-34	:	

This is a decision on the petition filed on 20 January, 2006, requesting withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action (Restriction Requirement) mailed on 7 March, 2005, with reply due absent an extension of time on or before 7 April, 2005;
- the application went abandoned after midnight7 April, 2005;
- the Office mailed the Notice of Abandonment on 29 December, 2005;
- on 20 January, 2006, Petitioner filed a the instant petition, with, *inter alia*, copies of the reply averred to have been submitted on 24 March, 2005, along with a date-stamped

("MAR 24 2005") receipt card (see: MPEP §503[1]) evidencing Office receipt thereof.

STATUTES, REGULATIONS AND ANALYSIS

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

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding

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[1] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

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

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

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.

It appears that Petitioner has satisfied the showing requirements described above.

CONCLUSION

The petition as considered under 37 C.F.R. §1.181 hereby is **granted** and fees are waived and were not charged.

The instant file is released to Technology Center 3600 for further processing in due course.

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

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NOV 29 2006
OFFICE OF PETITIONS

In re Application of	:	
Mark Thomas et al	:	
Application No. 10/851,551	:	ON PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 6488P005	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 25, 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 27, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 28, 2005.

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

This matter is being referred to Technology Center AU 2875 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
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AKERMAN SENTERFITT
P.O. BOX 3188
WEST PALM BEACH FL 33402-3188

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FEB 15 2008

OFFICE OF PETITIONS

In re Application of :
LUDEMAN, Christopher :
Application No. 10/851,597 : DECISION ON PETITION
Filed: May 21, 2004 : TO WITHDRAW
Attorney Docket No. **7302-6** : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed November 14, 2007.

The request is **APPROVED**.

A review of the file record indicates that Neil Jetter: (1) does not have power of attorney in this patent application; but (2) has been employed or otherwise engaged in the proceedings in this patent application. In view of the present decision, Neil Jetter and the customer number 30448 has/have been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) the intervening assignee of the entire interest. All future communications from the Office will be directed to the signing inventor or the assignee of the entire interest under 37 C.F.R. §3.71 at the first copied address below until otherwise properly notified by the applicant. Applicant is reminded that there is no attorney of record at this time.

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **CHRISTOPHER LUDEMAN**
911 SUNSWEPT RD. NE
PALM BAY, FL 32905

cc: **FOGG & POWERS, LLC**
10 SOUTH FIFTH STREET
SUITE 1000
MINNEAPOLIS, MN 55402

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DEC 06 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Brown, Raysman, Millstein, Felder & Steiner, LLP
900 Third Avenue
New York, NY 10022

In re Application of:	:	
Jonathan Schull	:	**DECISION ON PETITION**
Serial No. 10/851,606	:	**TO MAKE SPECIAL**
Filed: May 21, 2004	:	**(INFRINGEMENT)**
For: SYSTEM AND METHOD FOR CONTROLLING ACCESS TO PROTECTED INFORMATION	:	

This is a decision on the petition under 37 C.F.R § 1.102(d) filed July 30, 2004, 2004 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market; (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 July 30, 2004, 2004 includes all of the requirements above and, therefore, the petition is **GRANTED**.

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

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

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

kjd:12/2/04

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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R. Alan Burnett
Law Office of R. Alan Burnett, PS
4108 131st Ave SE
Bellevue WA 99006

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JUN 0 1 2006

OFFICE OF PETITIONS

In re Application of Feinleib, et al. Application No. 10/851,612 Filed: May 22, 2004 Attorney Docket No. 40.P001 FOR: METHOD, APPARATUS, AND SYSTEM FOR PROJECTING HOT WATER AVAILABILITY FOR SHOWERING AND BATHING	: : : : :	DECISION DISMISSING PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed April 25, 2006 (certificate of mailing date April 22, 2006), to revive the above-identified application.

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

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(a)." 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 Notice of Omitted Item(s) in a Nonprovisional Application, mailed July 20, 2004, which set an extendable period for reply of two (2) months to submit Figures 4b and 5a and claim fees. Having received no reply, this application became abandoned on September 21, 2004. A Notice of Abandonment was mailed on April 17, 2006.

Petitioners allege that due to a clerical error, the requirements listed in the July 20, 2004 Notice were not docketed. Therefore, the delay in responding to the Notice was unavoidable.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. This petition does not satisfy requirements (1) and (3).

With respect to (1), the **current** fee due for 1 independent claim over 3 is $100.00. Therefore, petitioners owe $100.00 - $43.00 already paid, or $57.00.

With respect to (3), the showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 USC § 133. Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term 'unavoidable' "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

As stated in the MPEP 711.03(c), a delay resulting from an error on the part of an employee in the performance of a clerical function may provide the basis for a showing of unavoidable delay provided that:

(1) the error was the cause of the delay at issue

(2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance;
(3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

Petitioners must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person responsible for the maintenance of the system. Petitioners should submit copies of docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing. The Office would like to see docketing records where the docketing entry should have been entered. An adequate showing requires a statement by all persons with direct knowledge of why docket procedures failed, setting forth the facts as they know them. Petitioners have not submitted a statement from the docketing clerk regarding the alleged docketing error.

In addition, petitioners have not supplied information regarding the amount and type of training provided to the docketing clerk, the degree of supervision of his/her work, examples of other work functions carried out, and checks on the described work which were used to assure the proper execution of assigned tasks. The Office would like information pertaining to the reliability of the docketing clerk. It must be established that reliance upon that individual represented the exercise of due care on the part of the attorney.

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

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

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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R. Alan Burnett
Law Office of R. Alan Burnett, PS
4108 131st Ave SE
Bellevue WA 99006

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OFFICE OF PETITIONS

In re Application of Feinleib, et al. Application No. 10/851,612 Filed: May 22, 2004 Attorney Docket No. 40.P001 FOR: METHOD, APPARATUS, AND SYSTEM FOR PROJECTING HOT WATER AVAILABILITY FOR SHOWERING AND BATHING	: : : : :	DECISION GRANTING PETITION

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

The above-identified application became abandoned for failure to timely reply to the Notice of Omitted Item(s) in a Nonprovisional Application, mailed July 20, 2004, which set an extendable period for reply of two (2) months to submit Figures 4b and 5a and claim fees. Having received no reply, this application became abandoned on September 21, 2004. A Notice of Abandonment was mailed on April 17, 2006.

Petitioners have submitted a proper reply in the form of claim fees, petitioners have submitted an adequate statement as to the unintentional nature of the delay in responding to the July 20, 2004 Notice, and petitioners have submitted the petition fee.

Therefore, the petition is **granted**.

The file is being returned to the Office of Initial Patent Examination for further processing.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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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BIB DATA SHEET

CONFIRMATION NO. 1675

SERIAL NUMBER	FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
10/851,624	05/22/2004 RULE	705	3625	

APPLICANTS
Altaf Hadi, Murphy, TX;

**** CONTINUING DATA ***************************

**** FOREIGN APPLICATIONS ***************************

**** IF REQUIRED, FOREIGN FILING LICENSE GRANTED **** ** SMALL ENTITY **
07/20/2004

Foreign Priority claimed ☐ Yes ☑ No 35 USC 119(a-d) conditions met ☐ Yes ☑ No Verified and Acknowledged /JASON B DUNHAM/ Examiner's Signature	☐ Met after Allowance Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS
		TX	4	23	3

ADDRESS

Altaf Hadi
123 Glen Ridge Drive
Murphy, TX 75094
UNITED STATES

TITLE

System and method for delivering real time remote buying, selling, meeting, and interacting in a virtual reality environment

FILING FEE RECEIVED		
477	FEES: Authority has been given in Paper No._____ to charge/credit DEPOSIT ACCOUNT No._____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

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John S. Pratt, Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street
Atlanta GA 30309

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JAN 1 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Jinichi Hiyama	:	
Application No. 10/851,632	:	DECISION GRANTING PETITION
Filed: May 21, 2004	:	
Attorney Docket No. 44471/301269	:	

This is a decision on the petition filed December 27, 2004, requesting that the above-identified application be accorded a filing date of May 21, 2004.

On May 21, 2004, applicant deposited the above-identified application. On December 3, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," stating that the application had not been accorded a filing date as the application was deposited without any drawings and that the filing date would be the date of receipt of the omitted items. Additionally, the Notice stated that an oath or declaration was missing.

In response, on December 27, 2004, applicant filed the present petition, a petition fee, an executed declaration, 11 sheets of drawings, and a date-stamped postcard receipt. The postcard acknowledged receipt of "Drawings (11 Sheets)" on May 21, 2004.

Upon review of the record, 11 sheets of drawings, deposited on May 21, 2004, have not been located among the application papers. However, the evidence is convincing that the application papers deposited on May 21, 2004, included 11 sheets of drawings, which were subsequently misplaced in the United States Patent and Trademark Office. Therefore, the application

including the 11 sheets of drawings, was complete on filing and will be granted a filing date of May 21, 2004.

Accordingly, the petition is granted.

The requirement to submit drawings set forth in the Notice of December 3, 2004, was sent in error and is hereby vacated. Accordingly, the $130.00 petition fee is unnecessary and will be credited to Deposit Account No. 11-0855.

The Office of Initial Patent Examination is directed **to accord the above-identified application a filing date of May 21, 2004,** using the 11 sheets of drawings submitted on December 3, 2004, and to mail a corrected filing receipt.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 1/14/05

2 Serial/Patent # 10/851,632

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	—	12/27/04	$ 130
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 11--0855

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

The requirement for drawings is vacated

11 REFUND REQUESTED BY: C.T. Donnell

TYPED/PRINTED NAME: C. T. Donnell TITLE: Pet Atty

SIGNATURE: C. T. Donnell PHONE: 272 3211

OFFICE: 4700

****

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APPROVED: Alicia Kelly DATE: 1/18/05

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

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Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
MAY 03 2010
OFFICE OF PETITIONS

In re Patent No. 7,537,765	:	DECISION ON REQUEST FOR
SALZWEDEL et al.	:	RECONSIDERATION OF
Issue Date: May 26, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/851,637	:	NOTICE OF INTENT TO ISSUE
Filed: May 24, 2004	:	CERTIFICATE OF CORRECTION
Docket No. 1900.0430003	:	
/LBB/SJE	:	

This is a decision on the petition filed on April 13, 2009, which is being treated as a petition 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 five hundred five (505) 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 **four hundred forty (440) days.**

On January 12, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b), stating that the initial patent term adjustment was 312 days. On April 13, 2009, patentee timely filed the present petition with the payment of the issue fee. Before a decision was reached on the merits of the petition, the above-identified application matured into U.S. Patent No. 7,537,765 on May 26, 2009. The patent issued with a revised Patent Term Adjustment of 311 days.[1] Patentee indicates that the patent is not subject to a terminal disclaimer.

[1] The initial determination of patent term adjustment was reduced by one day pursuant to 37 CFR 1.704(b) for paying the issue fee on April 13, 2009, three months and one day after the mailing of the notice of allowance on January 12, 2009.

On petition, patentee states:

> PAIR records indicate that a delay of 32 days is attributable to Applicant delay in filing a Notice of Appeal on December 1, 2007. However, Applicants believe that this should be increased to 62 days due to the filing of an RCE and Amendment and Reply on October 31, 2007. PAIR records mistakenly do not include the filing of the Amendment Reply with the RCE on this date.

Petition, 04/13/09, p. 3.

The Office notes that the filing of the RCE, Amendment and Reply, and IDS on October 31, 2007, after the filing of the notice of appeal (i.e. during the period of perfecting the appeal), are not supplemental replies or other papers within the meaning of 37 CFR 1.704(c)(8) that constitute a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, a period of reduction of 62 days is not warranted.

Additionally, patentee disputes the reduction of 69 days of patent term adjustment for the filing of the Supplemental Amendment on January 8, 2008. Specifically, patentee avers:

> … PAIR records incorrectly indicate that a Supplemental Reply was filed on January 8, 2008 and caused 69 days of Applicant delay. However, the paper filed on January 8, 2008 was not a supplemental reply; rather, it was a Supplemental Amendment filed after an RCE, *i.e.*, a Preliminary Amendment. Therefore, 37 C.F.R. § 704(c)(8) does not apply. In addition, the filing of the Supplemental Amendment on January 8, 2008 did not result in the issuance of a supplemental Office Action or supplemental Notice of Allowance. Therefore, 37 C.F.R. § 704(c)(6) also does not apply. Accordingly, the 69 days of delay attributed to the filing of this paper should be reduced to zero (0) days.

Petition, 04/13/09, p. 3.

The Office has considered patentee's argument but finds that it lacks merit. The Office agrees with patentee that the filing of the Supplemental Amendment on January 8, 2008, did not result in

the issuance of a supplemental Office action or notice of allowance and that 37 CFR 1.706(c)(6) is not the basis for the reduction. However, a review of the record reveals that the Supplemental Amendment on January 8, 2008, is a paper, not expressly requested by the examiner, filed after a reply within the meaning of 37 CFR 1.704(c)(8).

Pursuant to 37 CFR 1.704(c)(8):

> 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[.]

(Emphasis added).

It is undisputed that after filing a response in the form of a RCE on October 31, 2007, patentee filed a Supplemental Amendment on January 8, 2008. The record does not support a conclusion that the examiner expressly requested the filing of the paper. Thus, patentee failed to engage in reasonable efforts to conclude prosecution of the application and was properly assessed a delay of 69 days for the submission of the paper on January 8, 2008, pursuant to 37 CFR 1.704(c)(8). Accordingly, the period of reduction of 69 days is warranted and will not be removed.

Lastly, patentee asserts that 154 days of PTO delay should be entered under 37 CFR 1.702(b) in view of the Wyeth decision. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on May 25, 2007, and ends on October 30, 2007, the day before the RCE was filed, and is 159 (not 154) days. See 35 U.S.C. 154(b)(1)(B)(i). Further, the Office notes that patentee failed to account for the filing of the notice of appeal on October 1, 2007. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii).

In this instance, the period consumed by appellate review is 30 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, October 1, 2007, and ending on the day before the filing of the RCE, October 30, 2007. Thus, B delay is 129 days (159 - 30).

Accordingly, the patent term adjustment is 440 days (413 days of A delay + 129 days of B delay - 102 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 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 **four hundred forty (440) days**.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,537,765 B2

DATED : May 26, 2009 **DRAFT**

INVENTOR(S) : SALZWEDEL 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 311 days

Delete the phrase "by 311 days" and insert – by 440 days--

Day : Thursday
Date: 4/29/2010

PALM INTRANET

Time: 16:08:20

PTA Calculations for Application: 10/851637			
Application Filing Date:	05/24/2004	PTO Delay (PTO):	413
Issue Date of Patent:	05/26/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	102
Post-Issue Petitions:	0	Total PTA (days):	440
PTO Delay Adjustment:	129		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
95	04/29/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	129		
91.5	05/06/2009	PTA 36 MONTHS			
91	05/26/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
90	04/28/2009	EXPORT TO FINAL DATA CAPTURE			
89	04/27/2009	FINISHED INITIAL DATA CAPTURE			
88	04/27/2009	DISPATCH TO FDC			
87	04/27/2009	DISPATCH TO FDC			
86	04/13/2009	PETITION ENTERED			
85	04/14/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
84	04/13/2009	ISSUE FEE PAYMENT VERIFIED		1	80
83	04/13/2009	ISSUE FEE PAYMENT RECEIVED			
82	01/28/2009	SEQUENCE FORWARDED TO PUBS ON TAPE			
81	01/16/2009	EXPORT TO INITIAL DATA CAPTURE			
80	01/12/2009	MAIL NOTICE OF ALLOWANCE	18		65
79	01/09/2009	ISSUE REVISION COMPLETED			
78	01/09/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
77	01/09/2009	CASE DOCKETED TO EXAMINER IN GAU			
76	11/26/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
75	11/26/2008	DOCUMENT VERIFICATION			
74	11/24/2008	NOTICE OF ALLOWABILITY			
66	09/17/2008	DATE FORWARDED TO EXAMINER			
65	08/25/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
64	07/24/2008	MAIL RESTRICTION REQUIREMENT			

63	07/21/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
61	06/06/2008	DATE FORWARDED TO EXAMINER			
60	05/07/2008	RESPONSE AFTER NON-FINAL ACTION			
59	02/07/2008	MAIL NON-FINAL REJECTION			
58	02/04/2008	NON-FINAL REJECTION			
57	01/25/2008	DATE FORWARDED TO EXAMINER			
56	01/08/2008	SUPPLEMENTAL RESPONSE		69	45
51	10/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	10/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	11/28/2007	DATE FORWARDED TO EXAMINER			
47	10/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
46	11/28/2007	DATE FORWARDED TO EXAMINER			
45	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
44	11/28/2007	DISPOSAL FOR A RCE / CPA / R129			
42	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
41	10/01/2007	NOTICE OF APPEAL FILED		32	39
40	10/01/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
39	05/30/2007	MAIL FINAL REJECTION (PTOL - 326)			
38	05/29/2007	FINAL REJECTION			
37	03/14/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	03/14/2007	REFERENCE CAPTURE ON IDS			
35.7	03/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	33
35	03/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	03/24/2007	DATE FORWARDED TO EXAMINER			
33	03/14/2007	RESPONSE AFTER NON-FINAL ACTION			
32	12/14/2006	MAIL NON-FINAL REJECTION			
31	12/11/2006	NON-FINAL REJECTION			
30	09/29/2006	DATE FORWARDED TO EXAMINER			
29	09/25/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
28	08/23/2006	MAIL RESTRICTION REQUIREMENT	395		-1

27	08/21/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
26	06/22/2006	CASE DOCKETED TO EXAMINER IN GAU			
22	09/24/2004	PRELIMINARY AMENDMENT			
21	07/11/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	07/11/2005	CASE DOCKETED TO EXAMINER IN GAU			
19	02/22/2005	PRELIMINARY AMENDMENT			
18	03/02/2005	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
17	10/14/2004	APPLICATION RETURN FROM OIPE			
16	10/14/2004	APPLICATION RETURN TO OIPE			
15	10/14/2004	APPLICATION DISPATCHED FROM OIPE			
14	10/14/2004	APPLICATION IS NOW COMPLETE			
13	09/20/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
12	05/24/2004	CLAIM PRELIMINARY AMENDMENT			
10	09/20/2004	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
9	09/20/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	09/20/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
7	09/28/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
6	07/20/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	06/24/2004	CLEARED BY OIPE CSR			
3	06/24/2004	CASE CLASSIFIED BY OIPE			
2	05/30/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/24/2004	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

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IP GROUP, COLUMBIA SQUARE
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WASHINGTON, DC 20004

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AUG 2 0 2007

OFFICE OF PETITIONS

In re Application of
MATICHUK, Bruce
Application No. 10/851,639
Filed: May 24, 2004
Attorney Docket No. **90537-0001CIP**

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, 2006.

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

A review of the file record indicates that the power of attorney to Hogan & Hartson LLP has been revoked by the applicant of the patent application on July 11, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

T. Williams
Terri Williams
Petitions Examiner
Office of Petitions

cc: **HARRINGTON & SMITH, PC**
4 RESEARCH DRIVE
SHELTON, CT 06484-6212

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JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

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OFFICE OF PETITIONS

In re Application of
Jeanette Dixon
Application No. 10/851,657
Filed: May 24, 2004
Attorney Docket No.
118989-04288916

DECISION ON PETITION

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

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before April 23, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed January 22, 2007. Accordingly, the date of abandonment of this application is April 24, 2007.

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

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

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

Frances Hicks
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

JONES DAY
222 EAST 41ST STREET
NEW YORK NY 10017

In re Application of	:	
Jeanette Dixon	:	
Application No. 10/851,657	:	DECISION GRANTING PETITION
Filed: May 24, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 118989-04288916	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 10, 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 June 12, 2007 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 3676 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:
INTELLECTUAL PROPERTY GROUP
51 LOUISIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

---

[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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Dr. Zailin Yu
Fortune Rock, Inc.
Suite 109D
3120 Saint Paul Street
Baltimore, MD 21218

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OFFICE OF PETITIONS

In re Application of :
Fu, et al. :
Application No. 10/851,666 : ON PETITION
Filed: May 24, 2004 :
Attorney Docket No. ZTU0504

This is a decision on the petition under 37 CFR 1.137(a), filed October 10, 2007, and in duplicate on October 11, 2007, and October 15, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to respond to the Notice to File Missing Parts of Non-Provisional Application mailed May 16, 2005, which set a shortened period for reply of two (2) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A response was not received within the allowable period and the application became abandoned on July 17, 2005.

The replacement abstract and material relative to the sequence listing, filed October 10, 2007, and in duplicate on October 11, 2007, and October 15, 2007, are noted.

The filing fee and additional claim fees, paid October 10, 2007, is also noted.

It is noted that applicant states that a duplicate of this application was filed and accorded application serial number 10/936,447 and that applicant wishes to abandoned said application. Applicant must file a petition in application 10/936,447 requesting express abandonment of that application; this decision does not speak to the matters of application serial number 10/936,447.

The file is now being forwarded to the Office of Patent Application Processing for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE: E. Kim

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/17/06

TO SPE OF : ART UNIT 3711

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/851,673 Patent No.: 7048646

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: _____

S. Passaniti
Sebastiano Passaniti
Primary Examiner

SPE EUGENE KIM
U.S. DEPARTMENT OF COMMERCE
SUPERVISORY PATENT EXAMINER

3711
Art Unit

OIPE IAP38
JUL 2 4 2006
PATENT & TRADEMARK OFFICE

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	Docket No: Q81730
Yasuyo YAMANAKA, et al.	Group Art Unit: 3711
Appln. No.: 10/851,673	Examiner: Sebastiano Passaniti
Confirmation No.: 1145	Patent No.: 7,048,646
Filed: May 24, 2004	Issue Date: May 23, 2006
For: PUTTER HEAD	

REQUEST FOR CERTIFICATE OF CORRECTION

Certificate
JUL 2 7 2006
of Correction

ATTN: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the provisions of 37 C.F.R. § 1.323, please enter the attached Certificate of Correction.

Applicants submit that claims 1 and 4 have minor errors in that the phrase "forward half body" should be "first half body." Applicants submit that it is clear that "forward half body" as described in the specification corresponds to the non-limiting examples of the "first half body" as recited in claims 1 and 4. (See at least Specification at page 4, line 17, to page 5, line 4.) Also, Applicants submit that the requested change is also consistent with the prosecution history since no distinction was made between "forward half body" and "first half body" during the prosecution of claims 1 and 4.

Accordingly, Applicants submit that the requested change is minor in nature and merely corrects a clear error. Therefore, this request is considered to be proper and favorable consideration is respectfully requested.

07/26/2006 HALI11 00000151 194880 7048646
01 FC:1811 100.00 DA

REQUEST IS APPROVED 09/06/2006 (SP)

JUL 2 9 2006

REQUEST FOR CERTIFICATE OF CORRECTION
Patent No. 7,048,646

Attorney Docket No.: Q81730

Since the errors noted are believed to be the Applicants' responsibility, the USPTO is authorized to charge the statutory fee of $100.00 and all required fees to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this sheet is enclosed.

In view of the foregoing, issuance of the Certificate of Correction is respectfully requested.

Respectfully submitted,

Bhaskar Kakarla
Registration No. 54,627

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: July 24, 2006

JUL 28 2006

MODIFIED PTO/SB/44 (07-03)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO: 7,048,646

DATED: May 23, 2006

INVENTOR(S): Yasuyo YAMANAKA and Makoto KUBOTA

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

In claim 1, column 4, line 7, please delete "forward" and insert --first--

In claim 4, column 4, line 44, please delete "forward" and insert --first--

MAILING ADDRESS OF SENDER:
SUGHRUE MION, PLLC
WASHINGTON OFFICE
23373
CUSTOMER NUMBER

PATENT NO. 7,048,646

No. of additional copies

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MODIFIED PTO/SB/44 (07-03)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO: 7,048,646

DATED: May 23, 2006

INVENTOR(S): Yasuyo YAMANAKA and Makoto KUBOTA

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

In claim 1, column 4, line 7, please delete "forward" and insert --first--

In claim 4, column 4, line 44, please delete "forward" and insert --first--

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ROBINS & PASTERNAK LLP
1731 EMBARCADERO ROAD
SUITE 230
PALO ALTO, CA 94303

Mail Date: 04/21/2010

Applicant	: Guang Qu	: DECISION ON REQUEST FOR
Patent Number	: 7261544	: RECALCULATION of PATENT
Issue Date	: 08/28/2007	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,688	: OF WYETH
Filed	: 05/21/2004	:
		:

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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TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111

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JUL 23 2007

OFFICE OF PETITIONS

In re Application of

PIK, YOSSI et al.
Application No. 10/851,696
Filed: May 21, 2004
Attorney Docket No. **17900-004700US**

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 16, 2007.

The request is **APPROVED**.

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

The request was signed by PHILIP H. ALBERT on behalf of all attorneys of record who are associated with customer No. 59734. 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.

There are no outstanding office actions at this time.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

Terri Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **YOSSI PIK**
1 BAVLI ST.
TEL AVIV, ISRAEL 62914

cc: **KURT MASCHOFF**
BUCKLEY, MASSCHOFF & TALWALKAR
50 LOCUST AVENUE
NEW CANAAN, CT 06840

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/851,696	05/21/2004	Yossi Pik	17900-004700US

CONFIRMATION NO. 9247

OC000000024922915

59734
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111

Date Mailed: 07/19/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/16/2007.

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

Michelle R. Eason
Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

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OFFICE OF PETITIONS

In re Application of
Jason Scott Zimmerman
Application No. 10/851,699
Filed: May 21, 2004
Attorney Docket No. MATX-1-31304

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 30, 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 Notice to File Missing Parts of Nonprovisional Application (Notice), mailed July 21, 2004. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 22, 2004.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a reply with fees, (2) the petition fee of $770, 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 so notify the Office.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 2862 for appropriate action by the Examiner in the normal course of business on the reply received May 30, 2008.

April M. Wise
Petitions Examiner
Office of Petitions

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ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.
Intellectual Property Department
P.O. Box 10064
MCLEAN, VA 22102-8064

Mail Date: 04/20/2010

Applicant	: Diego Risi	: DECISION ON REQUEST FOR
Patent Number	: 7661026	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,726	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1153** 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

LA VERNE HUGHES
REVAL - DESIGNS & MORE
2000 E. BROADWAY, #231
COLUMBIA MO 65201

In re Application of La Verne Hughes Application No. 10/851,744 Filed: May 24, 2004 For: NO GLUE PUZZLE FRAME	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed February 5, 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 and publication fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of September 6, 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 the Office of Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Cohn et al.
Application No. 10/851,751
Filed: May 20, 2004
Attorney Docket No. 22009-09134

This is a decision on the petition under 37 CFR §1.181(a) to withdraw the holding of abandonment, filed August 14, 2006.

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

This application became abandoned for failure to timely submit the issue fee, as required by the Notice of Allowance and Fee (s) Due which was mailed January 27, 2006. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on April 27, 2006. This decision precedes the mailing of a Notice of Abandonment.

Petitioner asserts that the Notice of Allowance and Fee (s) Due mailed on January 27, 2006 was never received. A review of the record indicates the Notice of Allowance and Fee (s) Due was returned to the Office on February 7, 2006 due to insufficient address. Thus the Notice of Allowance and Fee (s) Due was improperly mailed.

Any request for Patent Term Adjustment must be submitted in a separate paper pursuant to 37 CFR 1.4(c) and MPEP 2730.

This application is being forwarded to Art Unit 2823 for re-mailing of the Notice of Allowance and the Notice of Allowability to the correspondence address of record. The three month non-extendable time period for reply will be set to run from the mailing date of the new Office Communication

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
Craig Young	:	
Application No. 10/851,757	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO WITHDRAW
Attorney Docket No. 07275-002007	:	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 11, 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 John W. Freeman on behalf of all attorneys/agents of record.

All attorneys/agents of record have been withdrawn.

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

The 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 Wan Laymon at 571-272-3220.

This application is being referred to Technology Center AU 3738.

Amelia Au
Petitions Examiner
Office of Petitions

cc: CRAIG W. YOUNG
VISION CARE OF MAINE
173 ACADEMY STREET
PRESQUE ISLE, ME 04769

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CHURCH STREET STATION
NEW YORK, NY 10008-0770

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OFFICE OF PETITIONS

In re Application of	:	
JENSEN, et al.	:	
Application No. 10/851,763	:	DECISION GRANTING PETITION
Filed: May 21, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **05432/1200984-US1**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 4, 2008, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 23, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 1625 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

Monica A. Graves
Petitions Examiner
Office of Petitions

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

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TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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OFFICE OF PETITIONS

In re Application of	:	
QUAN et al.	:	
Application No. 10/851,777	:	ON APPLICATION FOR
Filed: May 20, 2004	:	PATENT TERM ADJUSTMENT
Atty. Docket No. 020174-009810US	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION filed December 23, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand two hundred fifty-nine days (1259), not six hundred forty-nine (649) 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

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Cooper & Dunham, LLP
30 Rockefeller Plaza
20th Floor
New York, NY 10112

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In re Application:	:	
Michael H. Wigler et al.	:	
Application No. 10/851,779	:	NOTICE
Filed: May 21, 2004	:	
Attorney Docket No. 5981/79717-A/JPW/GJG	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 28, 2009. 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. The petition is **GRANTED**.

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

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

Carl Friedman
Petitions Examiner
Office of Petitions

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Renner, Kenner, Greive, Bobak, Taylor & Weber
Fourth Floor, First National Tower
Akron, OH 44308-1456

Mail Date: 04/21/2010

Applicant	: Jonathan M. Katz	: DECISION ON REQUEST FOR
Patent Number	: 7587972	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,806	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **829** 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	:	
Chen et al.	:	DECISION ON
Application No. 10/851,808	:	PETITION
Filed: May 21, 2004	:	
Atty Docket No. INTS-26,708	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed March 19, 2007.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit drawings within three months of the mailing date, September 18, 2006, of the Notice of Allowability. This Office action set a three-month nonextendable statutory period for reply. No drawings having been received, the above-identified application became abandoned on December 19, 2006. A courtesy Notice of Abandonment was mailed on February 19, 2007.

The petition included the required reply[1] in the form of submission of drawings; payment of the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded for processing into a patent.

[1] The Issue Fee and Publication Fee were timely paid on November 2, 2006.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 04/26/2010

Applicant	: Oliver Schmidt	: DECISION ON REQUEST FOR
Patent Number	: 7587721	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/851,813	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1511** 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
Peter J. Wilk
Application No. 10/851,823
Filed: May 21, 2004
Attorney Docket No. WO7-518

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed by May 17, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed August 10, 2004. The notice required the basic filing fees, an oath or declaration under 37 CFR 1.63 and the requisite surcharge. A Notice of Abandonment was mailed on May 13, 2005. In response, on May 17, 2005, the present petition was filed.

The petition is found to comply with the requirements of 37 CFR 1.137(b).

The application is being referred to the Office of Initial Patent Examination (OIPE) for further processing using the declaration filed May 17, 2005.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.

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

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JOHN M DEL VECCHIO
HODGSON RUSS LLP
SUITE 2000
ONE M&T PLAZA
BUFFALO NY 14203-2391

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OFFICE OF PETITIONS

In re	:
Robert A. Goltz	: DECISION ON APPLICATION
Application No. 10/851,836	: FOR PATENT TERM ADJUSTMENT
Filed: May 21, 2004	:
Attorney Docket No. 40026.0001	:

This decision is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT PERIOD", filed February 28, 2006, notifying the Office of an error in Applicant's favor in the determination of patent term adjustment under 35 U.S.C. 154(b).

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The determination of PTA at the time of the mailing of the Notice of Allowance is **zero (0) days**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **zero (0) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 6, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred forty-one (141) days.

The Office initially determined a patent term adjustment of one hundred forty-one (141) days based on an adjustment for PTO delay of one hundred forty-one (141) days, pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by zero (0) days of applicant delay. The adjustment of one hundred forty-one (141) days has been reviewed and found to be corrected.

However, a review of the application reveals that Applicant should have been assessed applicant delay. The Office mailed a Notice to File Corrected Application Papers on July 21, 2004. However, Applicant did not file a response until January 26, 2005. Accordingly, pursuant to 37 C.F.R. 1.704(b), applicant delay of one hundred fifty-eight (158) days should have been assessed.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **zero (0) days** (141 days of PTO delay, reduced by 158 days of applicant delay).

As the instant letter was submitted to advise the Office of an error in Applicants' favor, no fee was required.

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

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

Nancy Johnson for

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

Enc: Copy of adjusted PAIR calculation

PALM INTRANET

Day : Friday
Date: 3/9/2007
Time: 17:26:34

PTA Calculations for Application: 10/851836

Application Filing Date:	05/21/2004	PTO Delay (PTO):	141
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-158		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
34	03/06/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		158	
25	02/06/2006	MAIL NOTICE OF ALLOWANCE			
24	02/06/2006	MAIL EXAMINER'S AMENDMENT			
23	02/02/2006	ISSUE REVISION COMPLETED			
22	02/02/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
21	02/02/2006	EXAMINER'S AMENDMENT COMMUNICATION			
20	02/02/2006	NOTICE OF ALLOWABILITY			
19	01/09/2006	DATE FORWARDED TO EXAMINER			
18	01/03/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
17	12/09/2005	MAIL RESTRICTION REQUIREMENT	141		-1
16	12/07/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
15	03/19/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	03/19/2005	CASE DOCKETED TO EXAMINER IN GAU			
13	02/15/2005	APPLICATION RETURN FROM OIPE			
12	02/15/2005	APPLICATION RETURN TO OIPE			
11	02/15/2005	APPLICATION DISPATCHED FROM OIPE			
10	02/15/2005	APPLICATION IS NOW COMPLETE			
9	01/26/2005	ADDITIONAL APPLICATION FILING FEES			
8	01/26/2005	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
7	07/21/2004	CORRECTED PAPER			
4	06/25/2004	CLEARED BY OIPE CSR			
3	06/25/2004	CASE CLASSIFIED BY L&R			
2	06/02/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/21/2004	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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HODGSON RUSS LLP
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ONE M&T PLAZA
BUFFALO NY 14203-2391

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OFFICE OF PETITIONS

In re

Robert A. Goltz
Application No. 10/851,836
Filed: May 21, 2004
Patent No. 7,204,055
Issued: April 17, 2007

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
: AND NOTICE OF INTENT TO
: ISSUE CERTIFICATE OF
: CORRECTION

This decision is in response to the "SUPPLEMENTAL LETTER REGARDING PATENT TERM ADJUSTMENT PERIOD", filed May 1, 2007.

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

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **two hundred eighty (280)** days.

On February 6, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred forty-one (141) days.

The Office initially determined a patent term adjustment of one hundred forty-one (141) days based on an adjustment for PTO delay of one hundred forty-one (141) days, pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by zero (0) days of applicant delay. On February 28, 2006, Applicant filed an application for patent term adjustment, pointing out that he

was awarded more days of patent term than appropriate. On March 12, 2007, a decision was mailed, stating that the correct patent term was zero (0) days. On April 17, 2007, the application issued into Patent No. 7,204,055 with a patent term adjustment of two hundred nineteen (219) days.

However, applicant has stated that the assessment of zero days was in error. A Notice to File Corrected Application Papers was mailed on July 21, 2004, and Applicant filed a response on January 26, 2005. The decision stated that as a result Applicant should have been assessed delay of one hundred fifty-eight (158) days. However, the decision was in error. Pursuant to 37 C.F.R. § 1.704(b), Applicant had three months to file a reply. Accordingly, Applicant should only have been assessed delay of ninety-seven (97) days for this filing, not one hundred fifty eight (158) days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **two hundred eighty (280) days** (377 days of PTO delay, reduced by 97 days of applicant delay).

As the original letter filed on February 28, 2006 was submitted to advise the Office of an error in Applicant's favor, no fee was required.

The matter is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 CFR 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **two hundred eighty (280)** days subject to any disclaimers.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,204,055 B2

DATED : April 17, 2007

INVENTOR(S) : Robert A. Goltz

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (219) days

Delete the phrase "by 219 days" and insert – by 280 days—

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MAY 25 2007

OFFICE OF PETITIONS

In re Application of Mark P. Grady Jr. et al Application No. 10/851,849 Filed: May 21, 2004 Attorney Docket No. 8932-948-999 (708716-9999	DECISION ON PETITION UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 8, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 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 Irvin Dingle at (571) 272-3210. 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 3733 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Frances Hicks
Petition Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/851,849	05/21/2004	3733	1998	8932-948-999 (708716-9999	81	2

CONFIRMATION NO. 3625

CORRECTED FILING RECEIPT

OC000000024025602

20583
JONES DAY
222 EAST 41ST ST
NEW YORK, NY 10017

Date Mailed: 05/24/2007

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)

Mark P. Grady JR., West Chester, PA;
Keith A. Mayo, Gig Harbor, WA;
Jeff W. Mast, Reno, NV;
Brett R. Bolhofner, St. Petersburg, FL;
Kenny Koay, West Chester, PA;

Power of Attorney: The patent practitioners associated with Customer Number **20583**.

Domestic Priority data as claimed by applicant

This application is a CIP of 10/843,113 05/11/2004

Foreign Applications

If Required, Foreign Filing License Granted: 07/20/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/851,849

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Bone plate

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

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INTERNATIONAL BUSINESS MACHINES CORPORATION
650 HARRY ROAD, L2pa/J2C
INTELLECTUAL PROPERTY LAW
SAN JOSE CA 95120-6099

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FEB 14 2008

OFFICE OF PETITIONS

In re Application of :
Thomas Keith Clark et al :
Application No. 10/851,863 :
Filed: May 20, 2004 :
Attorney Docket No. BEA920040031US1 :

ON PETITION

This is a decision on the petition, filed February 12, 2008, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 10, 2008 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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 2162 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

DAVID W. VICTOR
KONRAD RAYNES & VICTOR, LLP
315 SOUTH BEVERLY DRIVE, STE. 210
BERVERLY HILLS, CA 90212

UNITED STATES PATENT AND TRADEMARK OFFICE

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RICK MATOS, PH.D.
INNOVAR, L.L.C.
P.O. BOX 250647
PLANO, TX 75025-0647

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SEP 10 2004

OFFICE OF PETITIONS

In re Application of :
J. Faour et al :
Application No. 10/851,866 : NOTICE
Effective Date: May 21, 2004 :
Attorney Docket No. PHUS-123 :

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 matter is being referred to the Office of Initial Patent Examination.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

HOWREY LLP
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DRIVE, SUITE 200
FALLS CHURCH, VA 22042-2924

In re Patent No. 6,947,202 :
Issue Date: September 20, 2005 :
Application No. 10/851,888 : NOTICE
Filed: May 20, 2004 :
Attorney Docket No. 07783.0034.CPUS02

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

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

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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MEDTRONIC
Attn: Noreen Johnson - IP Legal Department
2600 Sofamor Danek Drive
Memphis, TN 38132

Mail Date: 04/21/2010

Applicant	: Hai H. Trieu	: DECISION ON REQUEST FOR
Patent Number	: 7585316	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/851,889	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/21/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1510** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MAIL

SEP 2 2 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ALFRED F. HOYTE, ESQ.
SUITE 700
733 15TH STREET, N.W.
WASHINGTON, DC 20005

In re Application of :
Kwang Kim :
Application No. 10/851,892 :
Filed: May 24, 2004 :
For: METHOD OF PROVIDING BROADBAND :
SERVICES IN CLIENT DENSE ENVIRONMENTS :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 24, 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 does not fulfill the requirement in item (4) in that the search method was not fully discussed. More particularly, when a database is used in searching, the search term logic employed should be set forth in the petition.

For the above stated reasons, the petition is **DENIED**.

Should applicant desire reconsideration, he/she should supplement this petition by a declaration or statement under oath giving the information as outlined above. No further petition fee is required.

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

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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Shu M. Lee
OSI Pharmaceuticals, Inc.
Suite 110
58 South Service Road
Melville NY 11747

COPY MAILED
DEC 01 2006
OFFICE OF PETITIONS

In re Application of	:	
Bradley, et al.	:	
Application No. 10/851,902	:	DECISION ON PETITION
Filed: May 20, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. NC-10003	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed October 10, 2006 (certificate of mailing date October 5, 2006), to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED.**

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

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

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

37 CFR § 1.78(a)(6) requires 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. 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)(6). If this is not a correct reading of the statement appearing in the petition, petitioners should promptly notify the Office.

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

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

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

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.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1625 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

CC: SHU M. LEE
OSI PHARMACEUTICALS, INC.
41 PINELAWN ROAD
MELVILLE, NY 11747

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
10/851,902	05/20/2004	1625	1614	NC-10003		31	9

CONFIRMATION NO. 2836

CORRECTED FILING RECEIPT

OC000000021409118

Shu M. Lee
OSI Pharmaceuticals, Inc.
Suite 110
58 South Service Road
Melville, NY 11747

Date Mailed: 11/30/2006

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)

Stuart Edward Bradley, Oxford, UNITED KINGDOM;
Thomas Martin Krulle, Oxford, UNITED KINGDOM;
Peter John Murray, Oxford, UNITED KINGDOM;
Martin James Procter, Oxford, UNITED KINGDOM;
Robert John Rowley, Oxford, UNITED KINGDOM;
Colin Peter Sambrook Smith, Oxford, UNITED KINGDOM;
Gerard Hugh Thomas, Oxford, UNITED KINGDOM;

Power of Attorney:

Shu Lee--41147
Alexander Stewart--47110
Kim Nguyen--47821

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/551,256 03/08/2004
and claims benefit of 60/472,375 05/21/2003

Foreign Applications

If Required, Foreign Filing License Granted: 07/20/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/851,902

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Pyrrolopyridine-2-carboxylic acid amide inhibitors of glycogen phosphorylase

Preliminary Class

546

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

LICENSE FOR FOREIGN FILING UNDER
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Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

COPY MAILED

FEB 26 2008

In re Application of	:	
LOUIE, Gordon V. et al.	:	
Application No. 10/851,918	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO WITHDRAW
Attorney Docket No. **20268-704.201**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 01, 2008.

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

A review of the file record indicates that the power of attorney to TOWNSEND AND TOWNSEND AND CREW, LLP has been revoked by the assignee of the patent application on February 13, 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 Tredelle Jackson at 571-272-2783.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **WILSON SONSINI GOODRICH & ROSATI**
650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

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

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JUN 13 2007

OFFICE OF PETITIONS

In re Application of
ULLMAN, Jeffrey D. et al.
Application No. 10/851,920
Filed: May 21, 2004
Attorney Docket No. **GRAD-0003**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 28, 2007.

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

A review of the file record indicates that the power of attorney to Woodcock Washburn LLP has been revoked by the assignee of the patent application on March 09, 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 Michelle R. Eason at 571-272-4231.

Terri Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **PETER M. ULLMAN LLC**
PO BOX 6764
LAWRENCEVILLE, NJ 08648-0764

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/851,920	05/21/2004	Jeffrey D. Ullman	GRAD-0003

CONFIRMATION NO. 2153

OC000000024016764

OC000000024016764

68685
PETER M. ULLMAN LLC
PO BOX 6764
LAWRENCEVILLE, NJ 08648-0764

Date Mailed: 05/23/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/09/2007.

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.

Michelle R. Eason

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

ATTORNEY/APPLICANT COPY

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/851,920	05/21/2004	Jeffrey D. Ullman	GRAD-0003

CONFIRMATION NO. 2153

OC000000024016635

OC000000024016635

23377
WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

Date Mailed: 05/23/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/09/2007.

- 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).

Michelle R. Edson

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

FORMER ATTORNEY/AGENT COPY

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JAN 11 2007

OFFICE OF PETITIONS

BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

In re Application of :
David B. Sutton, et al. :
Application No. 10/851,927 : ON PETITION
Filed: May 21, 2004 :
Attorney Docket No. PRIV 0105 PUS :

This is a decision on the petition under 37 CFR 1.137(b), filed August 11, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office action mailed October 18, 2005. This decision precedes the mailing of a Notice of Abandonment.

The application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

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

The application file is being forwarded to Technology Center AU 3694, for further processing of the request for continued examination under 37 CFR 1.114 filed August 11, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE FL 32614-2950

In re Application of:
Daum, Wolfgang et al.
Appl. No.: 10/851,931
Filed: May. 21, 2004
For: STENT, METHOD FOR PROCESSING STENT, AND METHOD OF STENTING A PATIENT

DECISION ON PETITION UNDER 37 CFR § 1.103(c)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(c) filed on Oct. 31, 2007.

The petition is **GRANTED**.

Pursuant to applicant's request filed on Oct. 31, 2007, action by the Office is suspended on this application under 37 CFR § 1.103(c) for a period of three (3) months. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to Henry C. Yuen, Special Programs Examiner, whose telephone number is (571) 272-4856.

Frederick R. Schmidt, Director
Technology Center 3700

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JUN 2 2005

Theodore O. Haas
46 Meadows Lane
Haverford, PA 19041

In re application of Theodore Otto Haas Application No. 10/851,937 Filed: May 21, 2004 For: INEXPENSIVE SNOWPLOW	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)**

This is a decision on the petition submitted on May 21, 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 birth certificate and license for Theodore Otto Haas indicating that he is at least 65 years of age.

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

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

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

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/dcg: 2/8/05

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Paper No. None

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

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JUN 05 2006
OFFICE OF PETITIONS

In re Application of :
Alan Fuchs et al. :
Application No. 10/851,997 :
Filing Date: May 20, 2004 :
Attorney Docket Number: 37-04 :
Title of Invention: TUNABLE :
MAGNETO-RHEOLOGICAL ELASTOMERS :
AND PROCESSES FOR THEIR :
MANUFACTURE :

DECISION ON PETITION
UNDER 37 C.F.R. §§1.10

BACKGROUND

This is a decision on the petition under 37 C.F.R. §1.10(c), filed on October 14, 2005, requesting that a previously filed preliminary amendment be accorded a filing date of September 20, 2004.

The Office regrets the delay in issuing this decision.

On May 20, 2004, the above-identified application was received in the Office. On September 21, 2004, a preliminary amendment was received.

Petitioner has alleged that the preliminary amendment was deposited with the United States Postal Service on September 20, 2004, and the Patent Office has incorrectly assigned a filing date of September 21, 2004 to the preliminary amendment. Petitioner has set forth that this preliminary amendment was sent to the Office via the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS), and that

Express Mail label EV456657244US[1] was associated with this mailing. Petitioner has included a copy of the Express mail label, and it is clear that the label contains a USPS date stamp dated "SEP 20 2004."

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.10(c) sets forth, in toto:

> c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
>
> (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

ANALYSIS

Petitioner has met the second and third requirements of 37 C.F.R. §1.10(c), in that it has been established that the Express Mail mailing label was placed on the preliminary amendment and Petitioner has included a true copy of the Express Mail mailing label which shows that the mailing was accepted by the USPS on September 20, 2004.

Regarding the first requirement however, this amendment was submitted over a year before the filing of this petition. On renewed petition, Petitioner will need to establish when she first became aware of the filing date which was accorded, and if

---

1 It is noted that this same Express Mail number appears on the first page of the specification, within the certificate of mailing, which is dated September 20, 2004.

it was not until recently, why this matter took over one year to come to her attention.

CONCLUSION

This petition is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.10(c)." This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[2], hand-delivery[3], or facsimile[4].

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
3 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
4 (571) 273-8300- please note this is a central facsimile number.

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. None

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

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SEP 22 2006
OFFICE OF PETITIONS

In re Application of Alan Fuchs et al. Application No. 10/851,997 Filing Date: May 20, 2004 Attorney Docket Number: 37-04 Title of Invention: TUNABLE MAGNETO-RHEOLOGICAL ELASTOMERS AND PROCESSES FOR THEIR MANUFACTURE	DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.10(C)

This is a decision on the renewed petition under 37 C.F.R. §1.10(c), filed on August 4, 2006, requesting that a previously filed preliminary amendment be accorded a filing date of September 20, 2004.

On May 20, 2004, the above-identified application was received in the Office. On September 21, 2004, a preliminary amendment was received.

The original petition was submitted on October 14, 2005, and contained an allegation that the preliminary amendment was deposited with the United States Postal Service on September 20, 2004, and the Patent Office has incorrectly assigned a filing date of September 21, 2004 to the preliminary amendment.

The original petition was dismissed via the mailing of a decision on June 5, 2006, for failing to meet 37 C.F.R. §1.10(c)(1). With this renewed petition, this deficiency has been rectified.

As such, the renewed petition is **GRANTED**.

Office records will reflect that the preliminary amendment was received on September 20, 2004.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

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

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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
EXCHANGE PLACE
BOSTON MA 02109-2881

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APR 10 2007

OFFICE OF PETITIONS

In re Application of
Peter Phelps et al.
Application No. 10/852,000
Filed: May 20, 2004
Attorney Docket No.: CYC-046C1

ON PETITION

This is a decision on the petition filed March 13, 2007 under 37 CFR 1.10(e) and to withdraw the holding of abandonment for the above-identified application. The petition is being treated under 37 CFR 1.181.

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

The application was held abandoned on October 30, 2006, for failure to timely submit a timely response to the non-Final Office Action July 28, 2006, which set a three month period for reply. Accordingly, a Notice of Abandonment was mailed March 12, 2007.

Petitioner asserts that a response was filed and, in support, petitioner has submitted, *inter alia*, a copy of the response in the form of an amendment, and a post card receipt date stamped October 30, 2006 by the USPTO.

A search of the application file and the USPTO records reveals that in fact, an amendment was filed on October 30, 2006 with a certificate of mail dated October 30, 2006, which was the first business day after October 28, 2006, which fell on a weekend day. Accordingly, the Notice of Abandonment mailed March 12, 2007 was mailed in error and is hereby withdrawn. No petition fee is due and none has been charged.

This matter will be referred to Technology Center 1612 for appropriate action on the amendment filed October 30, 2006, a copy of which was submitted upon petition.

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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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE STREET
EXCHANGE PLACE
BOSTON, MA 02109-2881

Mail Date: 05/13/2010

Applicant	: Peter D. Phelps	: DECISION ON REQUEST FOR
Patent Number	: 7615511	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/852,000	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **600** 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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JUN 28 2005

THOMAS JOHN RAUBER
6050 VISTA HILL
DANSVILLE, NY 14437

In re application of	:	**DECISION ON PETITION**
Thomas John Rauber	:	**TO MAKE SPECIAL**
Application No. 10/852,012	:	**(APPLICANT'S AGE)**
Filed: May 25, 2004	:	
For: ROTATING LADLE AND ROTATING SPATULA		

This is a decision on the petition submitted on December 13, 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 birth certificate indicating Mr. Rauber 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
(571) 272-6587

KJD/slb: 06/16/05

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NASHUA NH 03061-3445

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DEC 3 0 2004

OFFICE OF PETITIONS

In re Application of
Furlong, Cole & Carlson
Application No. 10/852,014
Filed: May 24, 2004
Attorney Docket No. MET003-US
For: USING INTER-PACKET GAP AS MANAGEMENT CHANNEL

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed October 25, 2004 (certificate of mailing date October 20, 2004).

The petition is granted.

Petitioner has shown that the non-signing inventors, Brian Cole and Gregory Carlson, have constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration/statement of facts of Attorney Neil Maloney establishes that the inventors were mailed the application papers, including the specification, claims and drawings, but failed to respond to numerous requests that they sign the declaration. Petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

Pursuant to petitioner's authorization, deposit account no. 50-0323 will be charged a $130.00 petition fee.

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

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

After this decision is mailed, the above-identified application will be forwarded to Group Art Unit 2661 for examination in due course.

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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BRIAN COLE
5 WAYNE DR.
NASHUA, NH 03063

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DEC 3 0 2004

OFFICE OF PETITIONS

In re Application of
Furlong, Cole & Carlson
Application No. 10/852,014
Filed: May 24, 2004
Attorney Docket No. MET003-US
For: USING INTER-PACKET GAP AS MANAGEMENT CHANNEL

LETTER

Dear Mr. Cole:

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 (571) 272-3230.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: MAINE & ASMUS
100 MAIN STREET
P O BOX 3445
NASHUA NH 03061-3445

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GREGORY CARLSON
12 ABERDEEN RD.
NORTH CHELMSFORD, MA 01863

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DEC 3 0 2004

OFFICE OF PETITIONS

In re Application of
Furlong, Cole & Carlson
Application No. 10/852,014
Filed: May 24, 2004
Attorney Docket No. MET003-US
For: USING INTER-PACKET GAP AS MANAGEMENT CHANNEL

LETTER

Dear Mr. Carlson:

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 (571) 272-3230.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: MAINE & ASMUS
100 MAIN STREET
P O BOX 3445
NASHUA NH 03061-3445

UNITED STATES PATENT AND TRADEMARK OFFICE

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WARNER NORCROSS & JUDD LLP
900 FIFTH THIRD CENTER
111 LYON STREET, N.W.
GRAND RAPIDS MI 49503-2487

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OFFICE OF PETITIONS

In re Application of
Morrow et al.
Application No. 10/852,015
Filed: May 24, 2004
Attorney Docket No. 086624.130240-0001

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 17, 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 December 28, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is May 29, 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) 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 3765 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.

Charlema Grant

Charlema Grant
Petitions Attorney
Office of Petitions

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WILLIAM D WIESE
DUBOIS BRYANT CAMPBELL & SCHWARTZ
700 LAVACA ST
SUITE 1300
AUSTIN TX 78701

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OFFICE OF PETITIONS

In re Application of	:	
George D. Bittner	:	
Application No. 10/852,026	:	ON PETITION
Filed: May 24, 2005	:	
Attorney Docket No. 1136-700USC1	:	

This is a decision on the petition to revive under 37 CFR 1.137(a), filed September 27, 2005.

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

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(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 file a reply in response to the non-final Office action mailed January 25, 2005. This Office action set a shortened statutory period for reply of three (3) months. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on April 26, 2005. A Notice of Abandonment was mailed on August 25, 2005.

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 item (3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable: "The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."[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]

With regards to item (3), petitioner states that he joined a new law firm (the firm of DuBois, Bryant, Campbell & Schwartz LLP) on or about April 1, 2005. Petitioner filed a Change of Correspondence Address on May 10, 2005. Petitioner states that he did not receive the January 25, 2005 Office action at either his old firm (Jenkins & Gilchrist, P.C.) or his new firm.

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.[3] A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."[4] "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

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[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).

[3] See MPEP 711.03(c)(II).

[4] MPEP 711.03(c)(II) (emphasis added).

must be submitted..."[5]

The January 25, 2005 Office action was properly mailed to the firm of Jenkins & Gilchrist, the correspondence address of record at that time. Accordingly, on renewed petition, petitioner would need to submit the proper docket records from the firm of Jenkins & Gilchrist, P.C.

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 $1500 ($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 $250 petition fee has been charged to Deposit Account No. 50-3468, as authorized.

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

---

[5] Id.

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DUBOIS BRYANT CAMPBELL & SCHWARTZ
700 LAVACA ST
SUITE 1300
AUSTIN TX 78701

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OFFICE OF PETITIONS

In re Application of	:	
George D. Bittner	:	
Application No. 10/852,026	:	ON PETITION
Filed: May 24, 2005	:	
Attorney Docket No. 1136-700USC1	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed January 10, 2006.

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

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action mailed January 25, 2005. This Office action set a shortened statutory period for reply of three (3) months. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on April 26, 2005. A Notice of Abandonment was mailed on August 25, 2005. Applicant filed a petition to revive under 37 CFR 1.137(a) on September 27, 2005. However, the petition was dismissed in a decision mailed on November 16, 2005.

With the instant petition, applicant paid the petition fee and made the proper statement of unintentional delay. The required reply in the form of an amendment was previously submitted on September 27, 2005.

The application file is being forwarded to Group Art Unit 1713 for consideration of the amendment filed September 27, 2005.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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DUBOIS, BRYANT, CAMPBELL & SCHWARTZ, LLP
700 LAVACA STREET
SUITE 1300
AUSTIN, TX 78701

In re Application of George D. Bittner Application No. 10/852,026 Filed: May 24, 2004 Attorney Docket No. 1136-700USC1	: : : : : :	ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 6, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 2, 2009, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on October 3, 2009. On October 6, 2009, the present petition was filed. A Notice of Abandonment was subsequently mailed on November 5, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $405 and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 1796 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

In re Application of	:	
Darrin P. Haudrich et al.	:	
Application No. 10/825,032	:	DECISION ON PETITION
Filed: April 14, 2004	:	TO WITHDRAW
Attorney Docket No. 022000-001700US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 30, 2006.

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

A review of the file record indicates that the power of attorney to the attorneys and agents associated with Customer Number 20350 have been revoked by the assignee of the patent application on September 28, 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.

Terri Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Wildman Harrold Allen & Dixon LLP**
and The Boeing Company
225 W. Wacker Drive
Chicago, IL 60606

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/825,032	04/14/2004	Darin P. Haudrich	022000-001700US

CONFIRMATION NO. 7376

OC000000021072214

OC000000021072214

55132
WILDMAN HARROLD ALLEN & DIXON LLP
AND THE BOEING COMPANY
225 W. WACKER DR.
CHICAGO, IL 60606

Date Mailed: 11/02/2006

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/28/2006.

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

Terri S. Williams

TERRI S WILLIAMS
OP (571) 272-2991

ATTORNEY/APPLICANT COPY

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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
10/825,032	04/14/2004	Darin P. Haudrich	022000-001700US

CONFIRMATION NO. 7376

OC000000021072213

OC000000021072213

20350
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Date Mailed: 11/02/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/28/2006.

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

T. Williams

TERRI S WILLIAMS
OP (571) 272-2991

NEW ATTORNEY/AGENT COPY

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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/825,032	04/14/2004	Darin P. Haudrich	022000-001700US

CONFIRMATION NO. 7376

OC000000021072213

OC000000021072213

20350
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

Date Mailed: 11/02/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/28/2006.

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

Terri S. Williams

TERRI S WILLIAMS
OP (571) 272-2991

FORMER ATTORNEY/AGENT COPY

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DUANE MORRIS LLP
PO BOX 5203
PRINCETON NJ 08543-5203

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OFFICE OF PETITIONS

In re Application of	:	
Richard T. Redano	:	
Application No. 10/852,045	:	DECISION GRANTING PETITION
Filed: May 24, 2004	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. n0650-848	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 3, 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 Nonfinal Rejection of November 15, 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 3662.

Karen Creasy

Karen Creasy
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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Valeo Climate Control Corp
Intellectual Property Dept
4100 North Atlantic Boulevard
Auburn Hills MI 48326

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OFFICE OF PETITIONS

In re Application of	:	
Ben Yahia	:	
Application No. 10/852,050	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
Attorney Docket No. TFR0205	:	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).

The request was signed by Thomas Liniak on behalf of himself.

All other attorneys/agents remain of record.

The correspondence address of record remains unchanged.

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

April Wise
Petitions Examiner
Office of Petitions

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Angenehm Law Firm. Ltd.
P.O. Box 48755
Coon Rapids MN 55448-0755

In re Application of :
Jacobs :
Application No. 10/852,064 : ON PETITION
Filed: May 24, 2004 :
For: GOLF BOARD GAME :

This is a decision on the petition filed February 14, 2006, which is being treated as a petition under 37 CFR 1.181 to withdraw of the holding of abandonment, or in the alternative, under 37 CFR 1.137(b), to revive the above-identified abandoned application.

The petition considered under 37 CFR 1.181 to withdraw the holding of abandonment is dismissed.

The petition considered under 37 CFR 1.137(b) is **granted,** and this application is restored to pending status.

This application became abandoned for failure to reply to the non final Office action of May 26, 2005 which set an extendable period of 3 months for reply. As no reply was filed and no extension of time was obtained, the date of abandonment is August 27, 2005. A Notice of Abandonment was mailed February 7, 2006.

Petitioner contends that the instant application is not abandoned in that, as shown documents accompanying the instant petition, applicant timely (on July 29, 2006) sent in by a demonstrably received facsimile transmission, a request for an interview. Petitioner maintains that the application should not have been held abandoned since the USPTO "failed to respond to applicant, and not applicant having failed to respond to the USPTO as alleged."

<u>With respect to withdrawal of the holding of abandonment:</u>

Th facsimile transmission of July 29, 2006 was sent to an internal facsimile number at the USPTO, but can not be found within the contents of this IFW and has not been located. Even if the aforementioned transmission had been matched with this IFW, however, the holding of abandonment is proper for several reasons. First, petitioner does not point to any basis, and inspection of the patent statute and rules of the USPTO fails to reveal, any basis that a request for an interview, even if received constitutes a proper and complete reply within the meaning of 37 CFR 1.111(b) which states that:

> In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of

> objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

Indeed, even if the requested interview had been held, such would not have constituted a proper reply to the outstanding Office action. See 37 CFR 1.133(b) which states in pertinent part: "[a]n interview does not remove the necessity for reply to Office actions as specified in §§ 1.111 and 1.135." Since an interview in of itself is not a proper reply within the meaning of §§ 1.111 and 1.135 to an Office action, the contention that the mere request for an interview was a proper reply is simply untenable. Since the request for an interview was not such a complete and proper reply as the nature of the case then admitted, the holding of abandonment is clearly proper. See 37 CFR 1.135(b). The is particularly true as the request was directly transmitted to the examiner and not to the centralized facsimile transmission number for formal communications to the USPTO for patent application related correspondence as required by the Notice piblished in the *Off. Gaz United States Pat. and Trademark Off.* (28 Oct,. 2003). While the Notice did not preclude direct facsimile transmissions for informal, unofficial communications to the examiners, a formal facsimile transmission did require the use of the centralized number.

With respect to the petition under 37 CFR 1.137(b):

The proper reply–that filed with the instant petition--, is being accepted as unintentionally delayed.

This application is being referenced to the Technology Center to treat the reply concurrently filed with the instant petition.

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.

Brian Hearn

Brian Hearn
Petitions Examiner
Office of Petitions

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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

Mail Date: 04/30/2010

Applicant	: Dan Li	: DECISION ON REQUEST FOR
Patent Number	: 7616994	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/852,080	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **301** 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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900 FIFTH THIRD CENTER
111 LYON STREET, N.W.
GRAND RAPIDS MI 49503-2487

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OCT 06 2004

OFFICE OF PETITIONS

In re Application of :
Litke, Wysocki, Finke, and Hill :
Application No. 10/852,082 : DECISION ACCORDING STATUS
Filed: 24 May, 2004 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 39455.82436-002:

This is in response to the petition filed under 37 CFR 1.47(a) on 27 August, 2004.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor, Edward H. Wysocki, has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, petitioners have established that a copy of the application was sent to the non-signing inventor. However, the non-signing inventor refused in writing to execute the declaration listing him as a joint inventor along with Mark R. Litke, F. Fred Finke, and Walter S. Hill.

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, not 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 Technology Center 3600 for examination in due course.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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DIW 10-04

Edward H. Wysocki
2205 Cambridge Drive SE
Grand Rapids, MI 49506

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OCT 0 6 2004

OFFICE OF PETITIONS

In re Application of
Litke et al.
Application No. 10/852,082
Filed: 24 May, 2004
For: Lamp Mounting Assembly

Dear Mr. Wyoscki:

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

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

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

WARNER NORCROSS & JUDD LLP
900 FIFTH THIRD CENTER
111 LYON STREET NW
GRAND RAPIDS MI 49503-2487

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TECHNOLOGY CENTER 2100

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

In re Application of: TANAKA
Application No. 10/852,111
Filed: May 25, 2004
For: DISK CONTROL UNIT AND STORAGE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 26 October 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

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

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

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

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

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

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

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

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

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

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

ds

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

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OFFICE OF PETITIONS

In re Patent No. 7,002,116	:	
Issue Date: February 21, 2006	:	
Application No. 10/852,163	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. 017700-0166	:	

This is a decision on the petition filed March 2, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee data on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

This file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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TECHNOLOGY CENTER 3600

Norman F. Oblon
Oblon, Spivack, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

Inventor: Takayuki Okunishi et al.	:	PETITION TO HAVE PRIOR
Application No. 10/852,192	:	ART REFERENCES
Filed: May 25, 2004	:	CONSIDERED
Attorney Docket No.: 253427US3X	:	UNDER
For: HYDRAULIC EXCAVATOR	:	37 C.F.R. 1.181

This is in response to applicant's petition filed on August 4, 2006 to have the examiner consider the prior art references AP-AS listed on the PTO form 1449 of the IDS filed on December 28, 2004.

The petition is **GRANTED.**

The petitioner sets forth that prior art references AP-AS listed on the PTO form 1449 of the IDS filed December 28, 2004 should have been considered by the examiner because copies of the references were submitted and the relevance of the references was set forth in the European Search Report filed on the same date.

A review of the file record indicates that the copies of the references were submitted and the relevance of the references was set forth in the European Search Report. The examiner should have considered the prior art references AP-AS listed on the PTO form 1449 in accordance with MPEP 609.04(a) III.

Accordingly, the application will be forwarded to the examiner for consideration of the references and the preparation of a Supplemental Notice of Allowability.

Any questions dealing with this decision should be directed to Thomas B. Will at (571) 272-6998.

Summary: ***Petition Granted***

Donald T. Hajec, Director
Patent Technology Center 3600
(571)-272-5250

TBW/snm: 12/18/06

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OFFICE OF PETITIONS

In re Application of :
Nagi A. MANSOUR :
Application No. 10/852,212 : DECISION ON PETITION TO
Filed: May 25, 2004 : WITHDRAW FROM RECORD
Attorney Docket No. **360302000700** :

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 27, 2009.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request cannot be approved because the requesting attorney's customer number 25227 is not that of record in the application as appointed by the Revocation of Attorney filed June 16, 2006. Accordingly the request to withdraw by customer number can not be approved.

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

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

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

cc: **MORRISON & FOERSTER LLP**
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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

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OFFICE OF PETITIONS

In re Application of	:	
BAMBURAK, et al.	:	
Application No. 10/852,215	:	DECISION ON PETITION
Filed: May 25, 2004	:	TO WITHDRAW
Attorney Docket No. CING-0045/224.US.C2C1(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 November 8, 2006.

The request is **NOT APPROVED**.

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

The request cannot be approved because the attorney's signature was omitted from the request.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

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

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TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834

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DEC 1 5 2005

Technology Center 2100

In re Application of:
USHIJIMA et al
Application No. 10/852,218
Filed: May 25, 2004
For: STORAGE SYSTEM AND BACK-UP METHOD FOR STORAGE SYSTEM

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed on July 11, 2005 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **GRANTED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
>
> (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
>
> (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
>
> (D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
>
> (E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission of July 11, 2005 meets all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the

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

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

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Technology Center 2100

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

In re Application of: Kanda et al.
Application No. 10/852,223
Filed: May 25, 2004
For: STORAGE SYSTEM FOR MANAGING DATA WITH PREDETERMINED RETENTION PERIODS

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 November 15, 2005.

The Petition is **GRANTED**.

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

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

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

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

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

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

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

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

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

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

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OFFICE OF PETITIONS

In re Application of
Lee et al.
Application No. 10/852,249
Filed: May 25, 2004
Attorney Docket: 030681-660
Title of Invention: Light-Emitting Device and Method of Manufacturing the Same

ON PETITION

This is a decision on the petition, filed October 25, 2007, 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 to withdraw the holding of abandonment is **GRANTED**.

This above-identified application became abandoned for failure to timely file a response to a final Office Action which was mailed on February 2, 2007. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on May 3, 2007. A Notice of Abandonment was mailed on October 22, 2007.

Petitioner asserts that the final Office action on February 2, 2007 was never received. Petitioner states a search of the file jacket and docket records confirms the final Office action was not received. Although petitioner has states a copy of docket records has been provided in support of petitioner's contention, a copy of the docket records has not been located. The final Office action was returned to the Office on February 6, 2007 because the mailing was not deliverable as addressed. A review of the final Office action confirms that the action was properly addressed. Nonetheless, the record shows that there was an irregularity in the mailing of the final Office action.

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

This application is being forwarded to Art Unit 2814 for re-mailing of the final Office Action. The extendable three month time period for reply will be set to run from the mailing date of the Office action.

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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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED
JUN 29 2010
OFFICE OF PETITIONS

In re Patent No. 7,618,320	: DECISION ON REQUEST FOR
Hashimoto et al.	: RECONSIDERATION OF
Issue Date: November 17, 2009	: PATENT TERM ADJUSTMENT
Application No. 10/852,251	: AND
Filed: May 25, 2004	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 5905.0127-01	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 15, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred seventy-six (1576) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred seventy-six (1576) days is **GRANTED**.

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

The application is being forwarded to the Certificates of 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 five hundred seventy-six (1576) 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 : 7,618,320 B2

DATED : Nov. 17, 2009 **DRAFT**

INVENTOR(S) : Hashimoto 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 1248 days

Delete the phrase "by 1248 days" and insert – by 1576 days--

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BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314-1176

Mail Date: 08/02/2010

Applicant	: Jen-Shun Yang	: DECISION ON REQUEST FOR
Patent Number	: 7649896	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/852,269	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1639** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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1177 AVENUE OF THE AMERICAS (6TH AVENUE)
41ST FLOOR
NEW YORK, NY 10036-2714

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OFFICE OF PETITIONS

In re Application of :
Atsunori Miki :
Application No. 10/852,288 : ON PETITION
Filed: May 25, 2004 :
Attorney Docket No. N0029.1657

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 5, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2827 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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November 14, 2006

Patent No. : 7,055,559 B2
Ser. No. : 10/852294
Inventor(s) : Reinsch, et al.
Issued : June 6, 2006
Title : **DISTRIBUTED CONTROL ARCHITECTURE FOR DISPENSING PARTICULATE MATERIAL INTO A FLUID MEDIUM**
Docket No. : 186765/US/2

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent.

Comparison of the patent in column 6, line 67, and column 8, line 20 and 39, with the corresponding location in the application file reveals that there is no discrepancy.

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

ElishaEvans
For Cecelia Newman, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 110

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

CBN/eme

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

In re Application of Michael Williamson et al. Application No. 10/852,310 Filed: May 24, 2004 Attorney Docket No. CIB-12US / 122 Title: RESILIENT SLEEVE FOR A SPLINED CONNECTION	DECISION ON PETITION UNDER 37 C.F.R. § 1.137(B)

This is a decision on the petition filed June 7, 2007, pursuant to 37 C.F.R. § 1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 12, 2006, which set a shortened statutory period for reply of three months. A response was received on December 5, 2006, and a notice of non-compliant amendment was mailed on February 26, 2007. The notice set a one-month period of time for

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.

response. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were available. Accordingly, the above-identified application became abandoned on March 27, 2007.

With the present petition, Petitioner has submitted the petition fee, a response to the Office action, and the proper statement of unintentional delay. No terminal disclaimer is required.

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 response to the Office action that was submitted concurrently with the present petition can be processed.

Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225[2].

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 any further action(s) of Petitioner.

United States
Patent And
Trademark Office

P.O. Box 1450, Alexandria, Virginia 22313-1450 – www.uspto.gov

PETITION DECISION

07/30/04

Samuel Petuchowski
Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110-1618

Dear Applicant:

The Box PG Pub replacement drawings for application number 10/852337 received on 06/23/04 by the U. S. Patent and Trademark Office will be included for patent publication.

Telephone inquiries should be directed to Kaletus King, Office of Pre-Grant Publication 703 605-4283.

Kaletus King
Signature of Reviewer, Office of Pre-Grant Publication

BEST AVAILABLE COPY

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United States Patent and Trademark Office
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/852,342	05/24/2004	2642	770	064198.0190 (LB1037)	4	19	2

CONFIRMATION NO. 3688

CORRECTED FILING RECEIPT

OC000000014049889

31625
BAKER BOTTS L.L.P.
PATENT DEPARTMENT
98 SAN JACINTO BLVD., SUITE 1500
AUSTIN, TX 78701-4039

Date Mailed: 10/08/2004

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)

Robert R. Bushey, Cedar Park, TX;
Benjamin A. Knott, Round Rock, TX;
John M. Martin, Austin, TX;

Assignment For Published Patent Application

SBC Knowledge Ventures, L.P., Reno, NV

Power of Attorney: The patent practitioners associated with Customer Number **31625**.

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/21/2004

The number of your priority application, to be used for filing abroad under the Paris Convention is,
US10/852,342

Projected Publication Date: 11/24/2005

Non-Publication Request: No

Early Publication Request: No

Title

Method for designing an automated speech recognition (ASR) interface for a customer call center

Preliminary Class

379

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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FAY KAPLUN & MARCIN, L.L.P.
150 BROADWAY, SUITE 702
NEW YORK, NY 10038

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AUG 0 8 2008

In re Application of	:	
David P. Goren	:	
Application No. 10/852,347	:	DECISION ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 40146/26302	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 1, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 27, 2008, as required by the Notice of Allowance and Fee(s) Due mailed December 27, 2007. Accordingly, the date of abandonment of this application is March 28, 2008. A Notice of Abandonment was mailed April 21, 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 $1,440.00 and the publication fee of $300.00, (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

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

Liana Walsh
Petitions Examiner
Office of Petitions

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CHICAGO IL 60606

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APR 1 8 2006
OFFICE OF PETITIONS

In re Application of	:	
Ichiro Uehara et al	:	
Application No. 10/852,355	:	ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 0553-0329-01	:	

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 21, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2818 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

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

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Paper No. _____

Date : April 17, 2006

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner for Patent Examination Policy

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APR 18 2006
OFFICE OF PETITIONS

SUBJECT : Withdrawal from Issue of

Applicant(s) :Ichiro Uehara et al
Application No. :10/852,355
Filed :May 24, 2004

The above-identified application has been assigned Patent No. 7,033,953 and an issue date of April 25, 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 April 25, 2006:

> "All reference to Patent No. 7,033,953 to Ichiro Uehara et al of Japan for MANUFACTURING METHOD OF SEMICONDUCTOR DEVICE appearing in the Official Gazette of April 25, 2006 should be deleted since no patent was granted."

Karen Creasy

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

cc: Paul Harrison, MDW-4B03,(FAX-273-5468)
Deneise Boyd, MDE-3D39 (FAX-273-5124)
Mary Louise McAskill, ST-8C15 (FAX 305-4372)
Niomi Farmer, ST-8C14 (FAX-305-4372)
Mary E. Johnson (Cookie), MDE-7C71 (FAX 273-0038
Duane Davis P/OPC MDE-7D89

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NOV 28 2005

Technology Center 2100

In re Application of SHIMADA	:	
Application No.: 10/852,358	:	DECISION ON PETITION
Filing Date: May 25, 2004	:	FOR ACCELERATED
For: STORAGE SYSTEMS AND METHODS	:	EXAMINATION UNDER
OF CONTROLLING CACHE MEMORY	:	M.P.E.P. §708.02(VIII)
OF STORAGE SYSTEMS	:	

This is a decision on the petition filed September 15, 2005 under 37 CFR §1.102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **DISMISSED**.

M.P.E.P. §708.02, Section VIII, which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 CFR §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. The election may be made by applicant at the time of filing the petition for special status. Should applicant fail to include an election with the original papers or petition and the Office determines that a requirement should be made, the established telephone restriction practice will be followed. If otherwise proper, examination on the merits will proceed on claims drawn to the elected invention. If applicant refuses to make an election without traverse, the application will not be further examined at that time. The petition will be denied on the ground that the claims are not directed to a single invention, and the application will await action in its regular turn. Divisional applications directed to the nonelected inventions will not automatically be given special status based on papers filed with the petition in the parent application. Each such application must meet on its own all requirements for the new special status;

(C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. >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 >if the claims in the corresponding foreign application are of the same or similar scope to the claims in the U.S. application for which special status is requested<;

(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.

With respect to requirement (E), the discussion of the references does not point out with the particularity required by 37 CFR 1.111(b) and (c) how the claimed subject matter is patentable over the references. The petition states that a first feature of the present invention includes second cache memories for temporarily storing data. However, at least independent claim 2 does not require more than one second cache memory. Furthermore, in the discussion of the Nakayama reference, the petition states that Nakayama does not write to more than one second cache memory. However, as previously stated, at least one of the independent claims does not require such a feature. Thus, the petition fails to identify a patentable distinction between each independent claim and the cited art.

Because the petition fails to satisfy all of the criteria set forth above, the petition to make special is **DISMISSED**.

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

The application will remain in the status of a new application awaiting action in its regular turn.

Pinch M. Laufer

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

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Suite 370
Alexandria, VA 22314

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MAR 23 2006

TECHNOLOGY CENTER 2100

In re Application of:
Kentaro SHIMADA, et al.
Application No. 10/852,358
Filed: May 25, 2004
For: STORAGE SYSTEMS AND METHODS OF CONTROLLING CACHE MEMORY OF STORAGE SYSTEMS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the renewed petition, filed on 30 January 2006 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **GRANTED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
>
> (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
>
> (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
>
> (D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
>
> (E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submissions of 15 September 2005 and 30 January 2006 meet all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. § 1309.

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

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ROBERT M. SCHWARTZ, P.A.
P.O. BOX 221470
HOLLYWOOD FL 33022

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OFFICE OF PETITIONS

In re Application of :
Stephen O. Slatter et al :
Application No. 10/852,363 :
Filed: May 24, 2004 :
Attorney Docket No. 43125-0021 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 1, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before July 26, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed April 26, 2007. Accordingly, the date of abandonment of this application is July 27, 2007. A Notice of Abandonment was mailed on August 6, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $700 and the publication fee of $300, (2) the petition fee of $750, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

The filing of a terminal disclaimer is not required as a condition for revival of this application. Note 37 CFR 1.137(d). Accordingly, the terminal disclaimer filed with the petition will not be processed, and the $130 fee submitted therefor will be refunded to petitioner's credit card in due course.

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

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

Frances Hicks
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

FASTH LAW OFFICES (ROLF FASTH)
26 Pinecrest Plaza, Suite 2
Southern Pines, NC 28387-4301

In re Application of:
Johansson, Carl
U.S. Application No.: 10/852,392
Filing Date: May 24, 2004
Attorney Docket No.: 438.979PAT
For: METHOD FOR TRANSACTING SECURITIES

DECISION ON PETITION
(37 CFR 1.137(b))

This is a decision on the "Request For Withdrawal Of Holding Of Abandonment" filed May 31, 2005, treated herein as a petition under 37 CFR 1.137(b) to revive the above-entitled application.[1]

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply in a timely manner to the Notice To File Corrected Application Papers mailed July 22, 2004, which set a period of reply of two (2) months. A response was not filed and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned at midnight on September 22, 2004.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that it includes: (1) the reply in the form of a response to the Notice To File Corrected Application Papers mailed July 22, 2004 (i.e., a replacement drawing); (2) the petition fee; and (3) the required signed statement of unintentional delay. Accordingly, the reply to the Notice To File Corrected Application Papers of July 22, 2004 is accepted as having been unintentionally delayed.

The application file is being referred to the Office Of Initial Patent Examination.

Telephone inquiries concerning this decision should be directed to Richard M. Ross at (571) 272-3296 or, in his absence, the undersigned at (571) 272-3217.

Frances Hicks for
Brian Hearn
Petitions Examiner
Office Of Petitions

[1] The petition was accompanied by a "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" (Form PTO/SB/64); however, the Form PTO/SB/64 was not signed.

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JUN 08 2010

OFFICE OF PETITIONS

In re Application of	:	
Mark L. Stribling	:	DECISION ON PETITION
Application No. 10/852,398	:	TO WITHDRAW
Filed: May 24, 2004	:	FROM RECORD
Attorney Docket No. Orison-1	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed April 23, 2010, which is being treated as a request to withdraw from employment in a proceeding before the Office under 37 C.F.R. § 10.40.

The request is **DISMISSED**.

A review of the file record indicates that Evangeline Shih does not have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The request to change the correspondence address of record is not accepted in view of Evangeline Shih not having power of attorney. See MPEP §§ 601.03 and 405.

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

Currently, there is an outstanding Office action mailed June 8, 2010 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

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DEC 16 2005

TECHNOLOGY CENTER 2100

In re Application of:
A. HARADA et al
Application No. 10/852,399
Filed: May 25, 2004
For: INFORMATION PROCESSING APPARATUS CONTROL METHOD, INFORMATION PROCESSING APPARATUS, AND STORAGE DEVICE CONTROL METHOD

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petitions, filed on August 01, 2005 under 37 C.F.R. §102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **GRANTED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
>
> (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
>
> (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
>
> (D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

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

Applicant's submission of August 01, 2005 meets all the criteria set out above. Accordingly, the petition is **GRANTED**. The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. § 708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. § 1309.

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

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NOV 30 2005

TECHNOLOGY CENTER 2100

In re Application of: MIYAWAKI, et al.
Application No. 10/852,400
Filed: May 25, 2004
For: STORAGE AREA NETWORK SYSTEM USING INTERNET PROTOCOL, SECURITY SYSTEM, SECURITY MANAGEMENT PROGRAM AND STORAGE DEVICE

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 05 October 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **DISMISSED**.

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

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

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

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

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

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

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

In those instances where the request for this special status does not meet all the prerequisites set forth above, **applicant will be notified and the defects in the request will be stated**. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Technology Center (TC) Special Program Examiner.

The petition filed 05 October 2005 fails to adequately meet requirement (e) of the criteria set forth above. The discussion of the references does not point out with the particularity required by 37 CFR 1.111(b) and (c) how the claimed subject matter is patentable over the references. The petition fails to indicate how independent claims 21, 22, and 23 are patentable over the references. Also, it is suggested that if the identical statement is being made to distinguish each reference from an independent claim, then the statement should simply be made once in the petition. (E.g., "Regarding independent claim 1, none of the references disclose . . . .")

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Pinchus M. Laufer

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

ds

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Technology Center 2100

In re Application of: Miyawaki, et al.
Application No. 10/852,400
Filed: May 25, 2004
For: STORAGE AREA NETWORK SYSTEM USING INTERNET PROTOCOL, SECURITY SYSTEM, SECURITY MANAGEMENT PROGRAM AND STORAGE DEVICE

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the Request for Reconsideration filed January 30, 2006 on the petition to make special under 37 C.F.R. §102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, originally filed on October 5, 2005, and dismissed on November 30, 2005.

The Petition is **GRANTED**.

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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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		
Bernadelli, et al.	:	DECISION ON PETITION
Application No. 10/852,404	:	
Filed: May 24, 2004	:	
Attorney Docket No. PC18318B	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed February 7, 2007.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed November 3, 2006. This Notice set a statutory period for reply of three (3) months for issue fee transmittal. No issue fee having been received, the application became abandoned on February 4, 2006.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of the issue and publication fees.

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

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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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

ROBERT MCLAUCHLAN
P.O. BOX 26780
AUSTIN TX 78755

In re Application of:
ROEGNER, MICHAEL W.
Serial No.: 10/852,406
Filed: May 24, 2004
Title: **METHOD AND SYSTEM FOR DYNAMICALLY AND SPECIFICALLY TARGETING MARKETING**

DECISION ON PETITION TO MAKE SPECIAL FOR NEW APPLICATION UNDER 37 C.F.R. § 1.102 & M.P.E.P. § 708.02

This is a decision on the petition filed on September 22, 2006 to make the above-identified application special for accelerated examination procedure under 37 C.F.R. § 1.102(d).

The petition to make the application special is **DENIED**.

REGULATION AND PRACTICE

To be eligible for accelerated examination under 37 C.F.R. § 1.102(d) and pursuant to the "Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination" published in the Federal Register on June 26, 2006 (71 Fed. Reg. 36323) and effective August 25, 2006, the following conditions must be satisfied:

1. The application must be a non-reissue utility or design application filed under 37 CFR 1.111(a);
2. The application, the petition and the required fees must be filed electronically using the USPTO's electronic filing system (EFS), or EFS-web; if not filed electronically, a statement asserting that EFS and EFS-web were not available during the normal business hours;
3. The application, at the time of filing, must be complete under 37 CFR 1.51 and in condition for examination;
4. The application must contain three or fewer independent claims and twenty or fewer total claims and the claims must be directed to a single invention.

The application as filed is not eligible for the accelerated examination under 37 C.F.R. § 1.102(d) at least because the application, the petition and the required fees were not filed together electronically using the USPTO's electronic filing system (EFS), or EFS-web.

For the above-stated reason, the petition is denied. The application will therefore be taken up by the examiner for action in its regular turn.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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GENERAL COUNSEL
INLIGHT SOLUTIONS, INC.
800 BRADBURY SE
ALBUQUERQUE NM 87106

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OFFICE OF PETITIONS

In re Application of	:	
Ridder et al.	:	
Application No. 10/852,415	:	DECISION DISMISSING PETITIONS
Filed: 24 May, 2004	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. P0116.US1	:	

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed on 26 January, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED.**

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

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

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

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

The petition does not comply with item (1).

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.

The amendment fails to clearly specify the relationships between the applications. At the outset, it is unclear which applications claim the benefit of the instant application.

For example, it is unclear which application claims benefit of provisional Application No. 60/439,287, filed on 10 January, 2003.

Additionally, the priority claims appear defective in that, for certain applications, the relationship type specified appears inconsistent with USPTO records. For example, petitioner indicates that the relationship between Application Nos. 10/378,237, 10/281,576. and 09/832,585 "was a continuation-in-part" while USPTO records indicate that Applications No. 10378,237 is a **continuation** of Application No. 09/832,585, and a **continuation** of Application No. 10/281,576.

Furthermore, it is noted that the amendment references the filing date of Application No. 08/512,940 as "Aug. 5, 1995", while a review of Office records indicates this application was filed on 9 August, 1995.

Lastly, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

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

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

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

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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GENERAL COUNSEL
INLIGHT SOLUTIONS, INC.
800 BRADBURY SE
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OFFICE OF PETITIONS

In re Application of	:	
Ridder et al.	:	
Application No. 10/852415	:	DECISION DISMISSING PETITION
Filed: 05/24/2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. P0116.US1	:	

This is a decision on the renewed petition under 37 CFR § 1.78(a)(3), filed on December 6, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is again **DISMISSED**.

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

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

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

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

The petition does not comply with item (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.

Specifically, it is noted that the concurrently-filed amendment states that the subject application "is related to" Application No. 09/382,565, but does not indicate the relationship.

Further, in this regard, the amendment submitted with the petition references some of the prior-filed applications by the patent number rather than by the application number. *Note* 35 U.S.C. § 120, which provides, in relevant part:

> No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed **application** is submitted at such time during the pendency of the application as required by the Director. [Emphasis supplied.]

Note also CFR 1.78(a)(2)(i), which states, in relevant part:

> Except for a continued prosecution application filed under § 1.53(d), 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. [Emphasis supplied.]

Accordingly, a proper amendment complying with the provisions of 37 CFR 1.121 and satisfying the requirements of 37 CFR 1.78(a)(2)(i) must be submitted, along with a renewed petition under 37 CFR 1.78(a)(3).

Still further, 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 201.06(d).

Petitioners should review the claim for priority to ensure that a reference is made to the first application and to every intermediate application. In this regard, it is noted that the amendment filed concurrently with the petition states that U.S. Patent No. 6,856,408 (which issued from Appliction No. 10/378,237, filed on March 3, 2003), is a continuation-in-part of prior-filed Application No. 09/832,586. A review of the file of Application No. 10/378,237, however, reveals that a proper claim for the benefit of Application No. 09/832,586 was never made.

Before the petition under 37 CFR 1.78(a)(3) can be granted in the present application, petitioner must file a grantable petition under 37 CFR 1.78(a)(3) in Application No. 10/378,237, accompanied by either a Supplemental Application Data Sheet (signed in compliance with 37 CFR 1.33(b) and in compliance with 37 CFR 1.76) or a substitute amendment (complying with the provisions of 37 CFR 1.121) to add the claims of benefit to the prior filed provisional applications.

Upon the grant of the petition filed in 37 CFR 1.78(a)(3) in Application No. 10/378,237, petitioner may filed a renewed petition under 37 CFR 1.78(a)(3) in the present application.

Lastly, the examiner has determined that the amendment filed in response to the final Office cannot be entered without a Request for Continued Examination. Any renewed petition must be accompanied by an RCE and the required fee.

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

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

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Anthony Knight
Supervisor
Office of Petitions

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GENERAL COUNSEL
INLIGHT SOLUTIONS, INC.
800 BRADBURY SE
ALBUQUERQUE NM 87106

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OFFICE OF PETITIONS

In re Application of	:
Ridder et al.	:
Application No. 10/852415	: DECISION ON PETITION
Filed: 05/24/2004	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. P0116.US1	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed on February 21, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

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

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

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

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled

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

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

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 3768 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Anthony Knight
Supervisor
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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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
10/852,415	05/24/2004	3768	1098	P0116.US1	31	2

CONFIRMATION NO. 3098

CORRECTED FILING RECEIPT

General Counsel
InLight Solutions, Inc.
800 Bradbury SE
Albuquerque, NM 87106

OC000000029182808

Date Mailed: 04/09/2008

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 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)

Trent D. Ridder, Sandia Park, NM;
John D. Maynard, Albuquerque, NM;
Russell E. Abbink, Sandia Park, NM;
Robert D. Johnson, Albuquerque, NM;
Edward L. Hull, Fairport, NY;
Andrew D. Meigs, Albuquerque, NM;
Alan Ross, Albuquerque, NM;
Dashiell A. Birnkrant, Albuquerque, NM;

Power of Attorney:
Victor Grafe--42599

Domestic Priority data as claimed by applicant

This application is a CIP of 10/281,576 10/28/2002 PAT 7,202,091
which is a CIP of 09/832,608 04/11/2001 PAT 6,983,176
This application 10/852,415
is a CIP of 10/378,237 03/03/2003 PAT 6,865,408
which is a CIP of 09/832,585 04/11/2001 PAT 6,574,490
and is a CIP of 10/281,576 10/28/2002 PAT 7,202,091
This application 10/852,415
is a CIP of 10/753,506 01/08/2004 PAT 7,016,713

Foreign Applications

Title

Barrier film and laminated material, container for wrapping and image display medium using the saw, and manufacturing method for barrier film

Preliminary Class

428

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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OFFICE OF PETITIONS

In re Application of :
Glenn G. Fournie et al :
Application No. 10/852,428 :
Filed: May 24, 2004 :
Attorney Docket No. 1068US :

ON PETITION

This is a decision on the petition, filed May 4, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 8, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[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 3751 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:
GREENSFELDER, HEMKER & GALE, PC
10 S. BROADWAY, SUITE 2000
ST. LOUIS, MISSOURI 63102

24 FEB 2006

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TYCO HEALTHCARE GROUP, LP
INTELLECTUAL PROPERTY DEPARTMENT DOCKETING
15 HAMPSHIRE DRIVE
MANSFIELD MA 02048

In re Application of	:
FOURNIE et al	: DECISION ON
Application No.: 10/852,428	:
PCT No.: PCT/US02/2666	: PETITION
Int. Filing Date: 22 August 2002	:
Priority Date: None	: UNDER 37 CFR 1.181
Attorney's Docket No.: 1068US	:
For: SLIDING SEAL ADAPTER FOR A FEEDING SYSTEM	:

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 22 August 2002, applicant filed international application PCT/US02/26666, which did not claim priority of an earlier application filed. A Demand for international preliminary examination, in which the United States was elected, was timely filed 09 February 2004, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 22 Feburary 2005.

On 24 May 2004, applicant filed a transmittal letter for a new utility application, which was accompanied by, inter alia,: a check in the amount of $856 and a declaration. The application was treated as a filing under 35 U.S.C. 111(a).

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

To clearly indicate an international application is being filed under 35 U.S.C. 371 the applicant should use the "Transmittal Letter for United States Designated Office" (Form PTO-1390) as the transmittal letter.

Alternatively, one of the following indications may be used:

1) the applicant shall clearly state in the transmittal or cover letter that he or she is filing under 35 U.S.C. 371 or entering the national stage under PCT; or

2) the applicant clearly identifies in the oath or declaration the specification to which it is directed by referring to a particular international application by PCT Serial Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the described in the identified international application.

Applicants' declaration was directed "to the specification was described and claimed in International Application No. PCT/US02/26666 filed on August 22, 2002." Thus, the declaration served as an indication that the applicants were seeking to enter the national stage under PCT. Despite these indications, the application was treated as a filing under 35 U.S.C. 111(a).

Since the application was processed under 35 U.S.C. 111(a), the difference ($40) in the filing fee ($770) and the basic national fee ($730) will be refunded to applicant's Deposit Account No. 50-0726.

Applicant is urged to use the "Transmittal Letter for United States Designated Office" (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

Applicant's claim for priority is acknowledged. The application has an international filing date of 22 August 2002 under 35 U.S.C. 363 and a date of **24 May 2004** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

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 Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) and the mailing of a corrected filing receipt.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration

LES:ls

Telephone: (571) 272-3297
Facsimile: (571) 273-0459

enclosure: Form PTO-1390

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Paper No. None

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

COPY MAILED

SEP 24 2004

OFFICE OF PETITIONS

In re Application of :
Donald E. Weder :
Application No. 10/852,462 :
Filed: May 24, 2004 :
Attorney Docket No. 8404.056 :
Title: DECORATIVE ASSEMBLY FOR A FLORAL GROUPING :

DECISION ON PETITION UNDER 37 C.F.R. §1.53

This is a decision on the petition filed August 20, 2004.

On May 24, 2004, the above-identified application was deposited. On August 11, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application - Filing Date Not Granted (notice)", stating that the application had not been accorded a filing date, and advising applicants that a filing date would be accorded upon the receipt of drawings. The Notice set a two-month period for response.

On August 20, 2004, Petitioner submitted a petition under 37 C.F.R. §1.53. The petition is further accompanied by the petition fee and a copy of a 7 sheets of drawings containing Figures 1-13, along with a copy of applicants' postcard receipt acknowledging receipt of "Formal Drawings (7 sheets)" in the United States Patent and Trademark Office (Office) on May 24, 2004. Applicants request that the application, including Figures 1-13, be accorded a filing date of May 24, 2004.

Upon review of the electronic record, the above-mentioned figures have not been located among the application papers. However, the evidence is convincing that the application papers deposited on May 24, 2004 included 7 sheets of drawings containing Figures 1-

13, and each of the 7 sheets containing these figures was subsequently misplaced in the Office.

Therefore, the application, including Figures 1-13, was complete on filing and entitled to a filing date of May 24, 2004 as part of the original disclosure.

Accordingly, the petition is **GRANTED**.

The notice mailed August 11, 2004 was sent in error, and is hereby **VACATED**. Therefore, no petition fee is necessary, and the petition fee of $130 has been refunded to Petitioner's Deposit Account.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 24, 2004, using the original application papers filed on that date, as well as Figures 1-13 submitted on August 20, 2004. OIPE will then mail a corrected filing receipt.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-1372-3282, and the telephone number for the undersigned will change to 571-1372-3225.

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

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OCT 25 2004

~~OCT 14 2004~~ VOID

PROSKAUER ROSE LLP
ONE INTERNATIONAL PLACE 14TH FL
BOSTON MA 02110

In re Application of:	:
Lapidus et al.	:
Serial No.: 10/852,482	: PETITION TO MAKE SPECIAL
Filed: May 24, 2004	:
Attorney Docket No.: HEL-004	:

This is in response to applicants' petition filed August 20, 2004, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on applicants who are small entities having applications relating to biotechnology.

Applicants have satisfied the provisions set forth in M.P.E.P. 708.02, XII (A), (B), and (C). The $130.00 petition fee as required by 37 CFR 1.17(h) will be charged to applicants' Deposit Account No. 50-3081, as directed. Therefore, the petition is **GRANTED**.

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

Marianne C. Seidel

Marianne C. Seidel
Special Program Examiner
Technology Center 1600

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Adams and Reese, LLP
4400 One Houston Center
1221 McKinney
Houston, TX 77010

COPY MAILED
SEP 15 2008

In re Application of	:	
Soo Bong Choi	:	
Application No. 10/852,483	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
Attorney Docket No. 612725-1	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed August 13, 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. 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 David M. Ostfeld, on behalf of all attorney/agents associated with customer number 62713. All attorneys/agents associated with customer number 62713 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. Accordingly, all correspondence will be mailed to the first signing inventor at the address noted on the oath and declaration, since no assignee has properly intervened in this application. A courtesy copy of this decision will be mailed to address as indicated in the request to withdraw. If this firm would like to receive future

correspondence, the proper power of attorney documents must be submitted or if an assignee has intervened compliance with 37 CFR 3.73(b) must be satisfied.

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

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Soo Bong
Unit 5-908, Youwon Apartments
421-7 Yeonsoo-dong, Chungju-shi
Chungcheongbuk-do, Korea

cc: New Seoul International Patent
& Law Office
#801, BYC Building, 648-1
Yeoksam-dong, Gangnan-gu
Seoul, Korea 135-911

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/852,483	05/24/2004	Soo Bong Choi	612725-1

CONFIRMATION NO. 3335

POWER OF ATTORNEY NOTICE

62713
ADAMS AND REESE LLP
4400 ONE HOUSTON CENTER
1221 MCKINNEY
HOUSTON, TX 77010

OC000000032067125

Date Mailed: 09/15/2008

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/13/2008.

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

/kainabinet/

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

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Westman, Champlin & Kelly
900 Second Avenue South, Suite 1400
Minneapolis MN 55402-3319

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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 7,520,389 :
Issue Date: April 21, 2009 :
Application No. 10/852,492 :
Filed: May 24, 2004 :
Attorney Docket No. STL11147/S01.12-1208 :

This is a decision on the petition filed June 5, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3215. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Charlema Grant
Petitions Attorney
Office of Petitions

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

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

Mail Date: 04/21/2010

Applicant	: Gary J. Leanna	: DECISION ON REQUEST FOR
Patent Number	: 7655039	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/852,495	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **968** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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MAY 26 2006
OFFICE OF PETITIONS

COWAN LIEBOWITZ & LATMAN
JOHN J. TORRENTE
1133 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of	:	
Koichi Washisu	:	
Application No. 10/852,503	:	ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 1001-037	:	

This is a decision on the petition, filed May 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 April 3, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2878 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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Paper No. _____

Date : May 26, 2006

TO : Director, Office of Patent Publication

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OFFICE OF PETITIONS

FROM : Office of the Deputy Commissioner for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) :Koichi Washisu
Application No. :10/852,503
Filed :May 24, 2004

The above-identified application has been assigned Patent No. 7,053,353 and an issue date of May 30, 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 May 30, 2006:

"All reference to Patent No. 7,053,353 to Koichi Washisu of Japan for IMAGE TAKING APPARATUS appearing in the Official Gazette of May 30, 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

20062/15122C

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FEB 2 2 2006

FEB 22 2006

HANLEY, FLIGHT & ZIMMERMAN, LLC

James A. Flight
GROSSMAN & FLIGHT, LLC
Suite 4220
20 North Wacker Drive
Chicago IL 60606

BEST AVAILABLE COPY

In re Application of Rickie C. Lake Application No. 10/852,504 Filed: May 24, 2004 Attorney Reference No. INTEL/15122C	: : : : :	DECISION ON PETITION

This is a decision on the petition filed June 9, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

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

A non-final Office action was mailed on December 1, 2004, setting forth a three-month period of response. The application became abandoned on March 1, 2005 by operation of law.

Petitioner states that the non-final Office action was never received by applicant's representative and attests to the fact that a search of the file jacket and docket records indicates that the non-final Office action was not received. The petition is accompanied by a declaration of James A. Flight and a copy of the docket record where the non-received action would have been entered.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the non-final Office action was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

Applicant has provided the required statement attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. Further, applicant has provided a copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

Since applicant has made the requisite showing required under M.P.E.P §711.03(c), the holding of abandonment is withdrawn.

The application file is being forwarded to the Technical Support staff for re-mailing the non-final Office action. The shortened period for response set therein will be reset to expire three months from the date the Office action is remailed.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.

Janice A. Falcone

Janice A. Falcone, Director
Technology Center 2800
Semiconductor, Electrical and Optical
Systems and Components

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Hanley, Flight & Zimmerman, LLC
150 S. Wacker Drive
Suite 2100
Chicago IL 60606

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MAR 2 0 2009

OFFICE OF PETITIONS

In re Application of :
Lake : DECISION ON APPLICATION
Application No. 10/852,504 : FOR PATENT TERM ADJUSTMENT
Filed: May 24, 2004 :
Atty. Dkt. No.: INTEL/15122C :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT/REQUEST FOR CORRECTION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 CFR § 1.705(b)," filed April 18, 2008.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN**.

The Determination of Patent Term Adjustment mailed March 25, 2008 indicated that the application is entitled to adjustment of zero days. Applicants argue that the correct adjustment is 131 days.

The correct PTA at the time of the allowance is zero days.

Applicant states that applicant did not receive a proper Office action until the corrected first Office action was mailed on May 25, 2006. Applicant thus argues that applicant is entitled to an adjustment of 305 days under 37 CFR 1.702(a)(1).

Applicant's argument has been carefully considered but is not found convincing. The first notification under 35 USC 132 was properly mailed to the correct correspondence address of record on December 1, 2004. The fact that applicant successfully argued non-receipt of the notification does not negate the fact that it was properly mailed within the meaning of 35 USC 132. Thus, the re-mailing of the notification does not warrant an adjustment under 37 CFR 1.702(a)(1).

Applicant does not contest the adjustment of 25 days under 37 CFR 1.702(a)(2) in connection with the final rejection mailed November 30, 2007.

The adjustment totaling 25 days is properly reduced 94 days in accordance with 37 CFR 1.704(b) in connection with the reply

filed November 27, 2006. The reduction commenced August 26, 2006 and ended November 27, 2006.

Applicant does not contest the reduction of 27 days under 37 CFR 1.704(b) in connection with the reply filed July 5, 2007.

In review thereof, at the time of allowance, the application is entitled to an adjustment of zero days (25 days of Office delay less 121 days of applicant delays nets zero days of adjustment).

Receipt is hereby acknowledged of the required PTA application fee of $200.00 has been charged to applicant's deposit account as authorized.

Applicant is further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The application file is being forwarded to the Office of Data Management for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A Fries

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

Enclosure: Adjusted PAIR Calculation

Day : Thursday
Date: 3/19/2009

PALM INTRANET

Time: 11:24:13

PTA Calculations for Application: 10/852504			
Application Filing Date:	05/24/2004	PTO Delay (PTO):	25
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	663
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	542		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
66	03/19/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		94	
65	03/19/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	636		
51	03/25/2008	MAIL NOTICE OF ALLOWANCE			
50	03/21/2008	ISSUE REVISION COMPLETED			
49	03/21/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
48	03/21/2008	DOCUMENT VERIFICATION			
47	03/17/2008	NOTICE OF ALLOWABILITY			
41	02/27/2008	DATE FORWARDED TO EXAMINER			
40	02/21/2008	AMENDMENT AFTER FINAL REJECTION			
39	01/22/2008	CORRESPONDENCE ADDRESS CHANGE			
38	11/30/2007	MAIL FINAL REJECTION (PTOL - 326)	25		35
37	11/29/2007	FINAL REJECTION			
36	11/28/2007	DATE FORWARDED TO EXAMINER			
35	07/05/2007	RESPONSE AFTER NON-FINAL ACTION		27	33
34	07/05/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	03/08/2007	MAIL NON-FINAL REJECTION			
32	03/05/2007	NON-FINAL REJECTION			
31	12/31/2006	DATE FORWARDED TO EXAMINER			
30	11/27/2006	RESPONSE AFTER NON-FINAL ACTION		636	16
29	11/27/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	06/16/2006	CORRESPONDENCE ADDRESS CHANGE			
27	05/26/2006	LETTER REQUESTING INTERVIEW WITH EXAMINER			
26	05/25/2006	MAIL NOTICE OF RESTARTED RESPONSE			

		PERIOD			
25	05/24/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
24	02/22/2006	MAIL NOTICE OF RESCINDED ABANDONMENT			
23	05/03/2006	NOTICE OF RESCINDED ABANDONMENT IN TCS			
22	11/26/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	02/22/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
20	06/09/2005	PETITION ENTERED			
19	08/31/2005	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
18	08/30/2005	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
17.7	11/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	11/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	12/01/2004	MAIL NON-FINAL REJECTION			
15	11/29/2004	NON-FINAL REJECTION			
14	10/26/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	05/24/2004	PRELIMINARY AMENDMENT			
12	10/26/2004	CASE DOCKETED TO EXAMINER IN GAU			
11	09/21/2004	APPLICATION RETURN FROM OIPE			
10	09/21/2004	APPLICATION RETURN TO OIPE			
9	09/21/2004	APPLICATION RETURN FROM OIPE			
8	09/21/2004	APPLICATION IS NOW COMPLETE			
7	09/21/2004	APPLICATION RETURN TO OIPE			
6	09/21/2004	APPLICATION DISPATCHED FROM OIPE			
5	09/21/2004	APPLICATION IS NOW COMPLETE			
4	09/10/2004	CLEARED BY OIPE CSR			
3	09/10/2004	CASE CLASSIFIED BY OIPE			
2	09/04/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/24/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

In re Application of
Seon
Application No.: 10/852,505
Filed: May 24, 2004
Attorney Docket No.: 678-0618 DIV III

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 13, 2008, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to properly reply to the final Office action mailed April 20, 2007. An amendment, filed July 19, 2007, failed to place this application in *prima facie* condition for allowance, as was explained in the May 8, 2008 Advisory Action. No extensions of time were obtained pursuant to 37 CFR 1.136(a). Therefore, this application became abandoned on July 21, 2007.

The Notice of Appeal filed June 13, 2008 has been entered and made of record. Accordingly, the 2-month period for filing the appeal brief accompanied by the fee required by law, runs from the date of this decision.

After the mailing of this decision, the file will be forwarded to Technology Center AU 2618 to await receipt of an Appeal Brief.

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

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

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THE FARRELL LAW FIRM, LLP
290 Broadhollow Road
Suite 210E
Melville, NY 11747

Mail Date: 04/21/2010

Applicant	: Yong-Moon Seon	: DECISION ON REQUEST FOR
Patent Number	: 7587213	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/852,505	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

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OFFICE OF PETITIONS

In re Application of Nagano et al. :
Application No. 10/852,511 : Decision on Petition
Filing Date: May 25, 2004 :
Attorney Docket No. 04329.3319 :

This is a decision on the petition under 37 CFR 1.181, filed June 22, 2007, to withdraw the holding of abandonment.

The petition is **granted.**

Facts:

A final Office action was mailed June 15, 2006. The Office action set a three (3) month shortened statutory period for reply.

On September 6, 2006, the Office mailed a paper withdrawing the finality of the final Office action and resetting the time period for reply.

An amendment was filed December 6, 2006.

The Office mailed an Advisory action on January 4, 2007.

A Notice of Abandonment was mailed June 13, 2007.

Discussion:

Since the finality of the Office action was withdrawn, the Office acted incorrectly in mailing an Advisory Action and a Notice of Abandonment.

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

Technology Center Art Unit 2815 will be informed of the instant decision and the amendment filed December 6, 2006, 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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WOODCOCK WASHBURN LLP
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46TH FLOOR
PHILADELPHIA PA 19103

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In re Application of	:	
Robert FALOTICO et al.	:	
Application No. 10/852,517	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO MAKE SPECIAL UNDER
Attorney Docket No. CRD-0932 CIP	:	37 CFR 1.102(d)
	:	

This is a decision on the petition under 37 CFR §1.102(d), filed August 7, 2006, to make the above-identified application special based on actual infringement as set forth in M.P.E.P. § 708.02, Section II.

The petition is **DISMISSED.**

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 instant petition fails to meet the requirements set forth above for special status because it lacks the required statements in items (A) and (B) above. Specifically, the petition fails to state that: (1) there is an infringing device or product "actually on the market"; and (2) that some of the claims are "unquestionably infringed".

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

By Mail: Mail Stop PETITION
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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 1615 for action in its regular turn.

David Bucci
Petitions Examiner
Office of Petitions

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PHILADELPHIA, PA 19103

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In re Application of	:	
Robert Falotico et al	:	
Application No. 10/852,517	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO MAKE SPECIAL UNDER
Attorney Docket No. CRD-0932 CIP	:	37 CFR 1.102(d)
	:	

This is a decision on the petition under 37 CFR §1.102(d), filed November 7, 2006, to make the above-identified application special based on actual infringement as set forth in M.P.E.P. § 708.02, Section II.

The petition is **GRANTED.**

A grantable petition to make an application special under 37 CFR §1.102(d) and MPEP §708.02, Section II: Infringement, must be accompanied by the required fee pursuant to 37 CFR 1.17(h) and a statement by the applicant, assignee, or attorney/agent registered to practice before the office alleging:

> (A) That there is an infringing device or product actually on the market or method in use;
>
> (B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
>
> (C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.
>
> Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition complies with all the above stated requirements. Accordingly, the above-identified application has been accorded "special" status.

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 1615 for action on the merits commensurate with this decision.

David Bucci
Petitions Examiner
Office of Petitions

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LEVEQUE INTELLECTUAL PROPERTY LAW, P.C.
241 E. 4th Street, #102
FREDERICK, MD 21701

Mail Date: 04/21/2010

Applicant	: Ralph E. Busch	: DECISION ON REQUEST FOR
Patent Number	: 7661315	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/852,521	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1046** 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
Keith LEVY
Application No. 10/852,550
Filed: May 24, 2004
Attorney Docket No. **18512.01US1**

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 13, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Thomas E. Williams on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

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

cc: **KEITH LEVY**
30 EAST FLURON STREET, APT. 3710
CHICAGO, IL 60611

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In re Application of	:	
Costaras, et. al.	:	DECISION ON REQUEST
Application No. 10/852,569	:	TO WITHDRAW FROM
Filed: May 24, 2004	:	RECORD
Attorney Docket No. COSP101US	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed November 18, 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 CFR § 1.136(a).

The request was signed by Thomas G. Eschweiler on behalf of all the attorneys or agents of record.

All attorneys or agents of record have been withdrawn. Therefore, applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor, Basilios Costaras, at the address indicated below.

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

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee: MB

cc: Basilios Constantine Costaras
2211 Crocker Road, Suite 110
Westlake, OH 44145

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FAEGRE & BENSON LLP
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2200 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MN 55402-3901

Mail Date: 04/20/2010

Applicant	: Kim R. Smith	: DECISION ON REQUEST FOR
Patent Number	: 7666826	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/852,591	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1162** 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.

FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
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OFFICE OF PETITIONS

In re Application of	:	
Hubert F. Metzger	:	
Application No. 10/852,597	:	ON APPLICATION FOR
Filed: May 24, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. 054726-0117	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 filed on March 10, 2009. Applicant requests that the determination of patent term adjustment be corrected from four hundred seventy-six (476) days to nine hundred sixty-nine (969) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 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, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). (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[1]. Accordingly, it is still too soon to make a determination as to the correctness of

[1] The computer will also enter any additional periods of adjustment for Office delay and any additional periods of reduction for applicant delay after the mailing of the notice of allowance, such as pursuant to 37 CFR 1.703(a)(6) for Office delay and 37 CFR 1.704(c)(10) for applicant delay.

any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant 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, 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 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 applicant is 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 first filed in this application on July 28, 2008.

Applicant also states that the patent is subject to a terminal disclaimer over U.S. Patent No. 6,929,723.

It is noted that the filing of the terminal disclaimer on November 10, 2008 has no effect on the determination of patent term adjustment *set forth* on any patent issuing from this application. It is true that 35 U.S.C. 154(b)(2)(B) provides that:

> No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

Moreover, 37 CFR § 1.703(g) provides that:

> No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

However, the provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

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 decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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CHICAGO IL 60661

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MAR 29 2010

OFFICE OF PETITIONS

In re Application of	:	
Agrawal, et al.	:	
Application No. 10/852,598	:	ON APPLICATION FOR
Filed: May 24, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. HYB-026US1	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT", filed January 13, 2010, which is properly treated under 37 C.F.R. § 1.705(b). Applicants submits that the patent term adjustment to be indicated on the patent is one thousand, four hundred days (1,400) days, not four hundred and thirty-six (436) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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].

It is noted 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 —

---

[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.

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

It is further noted that a Request for Continued Examination (RCE) was filed in this application on February 5, 2009.

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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

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

for

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

CHOATE, HALL & STEWART/HARVARD UNIVERSITY
Two International Place
Boston, MA 02110

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JUN 2 5 2009

OFFICE OF PETITIONS

In re Application of	:	
David R. Liu, et al.	:	
Application No. 10/852,626	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
Attorney Docket No. 0342941-0107 (Liu 2163)	:	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 9, 2009.

The request is **APPROVED**.

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

The request was signed by Brenda Jarell on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor David R. Liu at the address indicated below.

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

Terri Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **David R. Liu**
1 Fox Run Lane
Lexington, MA 02420

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
10/852,626	05/24/2004	David R. Liu	0342941-0107 (Liu 2163)

CONFIRMATION NO. 6732

POWER OF ATTORNEY NOTICE

58374
CHOATE, HALL & STEWART/HARVARD UNIVERSITY
TWO INTERNATIONAL PLACE
BOSTON, MA 02110

OC000000036621109

Date Mailed: 06/24/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/09/2009.

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

/tswilliams/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

06 Jul 2009

David R. Lin
1 Fox Run Lane
Lexington, MA 02420

In re Application of:	David R. Lion *et al.*	
Application No.:	10852626	
Filed:	24 May 2004	DECISION ON PETITION TO ACCEPT COLOR DRAWINGS
Attorney Docket No.:	0342941-0107 (Lin 2163)	
For:	RNA Based Transcriptonal Regulators	

This is in response to applicant's petition filed 24 May 2004 under 37 C.F.R. 1.84 to use color drawings in the application is noted. Applicant has (A) paid the appropriate petition fee; (B) provided three (3) copies of formal color drawings; (C) the black and white photocopy of the drawings in the image file wrapper will suffice for 37 C.F.R. 1.84(a)(2)(iii); hoever, (D) the specification contains no appropriate language incorporating the color drawings under 37 C.F.R. 1.84(a)(2)(iv).

Applicant's petition is DENIED.

Questions with regard to this letter should be directed to the undersigned as indicated below.

/ Christopher S. F. Low /

Christopher S. F. Low
Supervisory Patent Examiner
TC 1600, Art Unit 1636 (571) 272-0951
Christopher.low@uspto.gov

06 Jul 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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www.uspto.gov

Cozen O'Connor, P.C.
1900 Market Street
Philadelphia, PA 19103-3508

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SEP 28 2006

OFFICE OF PETITIONS

In re Application of	:	
Donna T. Ward et al.	:	
Application No. 10/852,630	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
Attorney Docket No. ISIS0050-100	:	FROM RECORD
(CORE0001US)	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 13, 2006.

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

A review of the file record indicates that the power of attorney to the attorney(s) and/or agent(s) associated with Customer Number 34138 have been revoked by the assignee of the patent application on July 12, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

David Buecl
Petitions Examiner
Office of Petitions

cc: **Woodcock Washburn, LLP**
One Liberty Place-46th Floor
Philadelphia, PA 19103

UNITED STATES PATENT AND TRADEMARK OFFICE

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STALLMAN & POLLOCK LLP
SUITE 2200
353 SACRAMENTO STREET
SAN FRANCISCO CA 94111

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NOV 0 1 2004

OFFICE OF PETITIONS

In re Application of :
Russell M. Sampson et al :
Application No. 10/852,648 :
Filed: May 24, 2004 :
Attorney Docket No. ENVS-1220 :

NOTICE

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

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

OIPE IAP97 MAY 0 2 2007 PATENT & TRADEMARK OFFICE

FW

PTO/SB/83 (01-06)
Approved for use through 12/31/2008. 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	10/852,661
	Filing Date	May 25, 2004
	First Named Inventor	Christian ROTSCH
	Art Unit	1756
	Examiner Name	J. Ruggles
	Attorney Docket Number	543822007100

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

6-6-07
Approved
Jacqueline M. Stone
Jacqueline M. Stone, Director
Technology Center 1700/2900

Please withdraw me as attorney or agent for the above identified patent application, and

- [ ] all the attorneys/agents of record.
- [ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- [x] the attorneys/agents associated with Customer Number 25227

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:

Attorneys of record have been discharged by the client in accordance with 37 CFR § 10.40(b)4.

CORRESPONDENCE ADDRESS

1. [ ] The correspondence address is NOT affected by this withdrawal.
2. [x] Change the correspondence address and direct all future correspondence to:

[ ] The address associated with Customer Number:

OR

[X] Firm or Individual Name	Slater & Matsil L.L.P.				
Address	17950 Preston Road, Suite 1000				
City	Dallas	State	Texas	Zip	75252
Country	USA				
Telephone	972-732-1001	Email	info@slater-matsil.com		
Signature	Deborah S Gladstein				
Name	Deborah S. Gladstein	Registration No.	43,636		
Date	4/30/07	Telephone No.	(703) 760-7753		

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.

va-202425

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/852,680	05/25/2004	Franck Le	088245-0151	3166

23524 7590 06/19/2009
FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

EXAMINER
LE, CANH

ART UNIT	PAPER NUMBER
2439	

MAIL DATE	DELIVERY MODE
06/19/2009	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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JUN 19 2009

TECHNOLOGY CENTER 2100

Callie M. Bell
FOLEY & LARDNER LLP
150 EAST GILAMN STREET
P.O. BOX 1497
Madison, WI 53701-1497

In re Application of: Le, Franck et. al. Application No. **10/852,680** Filed: May 25, 2004 Atty. Docket No. 088245-0151 Title of Invention: **EXTENSION TO THE FIREWALL CONFIGURATION PROTOCOLS AND FEATURES**	**DECISION ON PETITION UNDER 37 CFR § 1.181**

This is a decision on the petition filed June 02, 2009 under 37 C.F.R. § 1.181 to invoke Supervisory Authority of the Commissioner, requiring the Examiner to withdraw the finality of the office action mailed on February 19, 2009, and request that the Examiner enter and consider the amendments submitted in the response filed April 17, 2009

The petition is **GRANTED**.

The Applicant's counsel filed a petition to the Director under 37 CFR § 1.181 to seek relief from actions of the Examiner in relation to the Final Office Action February 19, 2009 ("the action" hereafter). In the petition, Applicant's counsel alleged that the finality of the office action was premature because the Examiner introduced a new ground of rejection in the Final Office Action that was neither necessitated by applicant's amendment of the claims nor based on information submitted in an Information Disclosure Statement.

RELEVANT PROSECUTION

On October 19, 2007, a Final Office action was issued by the Examiner, to which Petitioners filed a response on December 19, 2007, in which none of the pending claims, claims 27-43, were amended.

On January 8, 2008, an Advisory Action was issued by the Examiner, to which Petitioners filed a Notice of Appeal on February 19, 2008. Petitioners filed a Brief on Appeal on March 31, 2008.

On June 24, 2008, a Final Office action was issued from the PTO, reopening prosecution and citing a new reference, U.S. Patent No. 7,316,028 to Donatelli et al.

On August 4, 2008, Petitioners filed an amendment after final, in which none of the pending claims, claims 27-43, were amended.

On August 21, 2008, an Advisory Action was issued from the PTO, to which Petitioners filed a Notice of Appeal with a Pre-Appeal Brief Request for Review on September 24, 2008.

On December 3, 2008, a Pre-Appeal brief decision was issued by the PTO to reopen prosecution of this application.

On February 19, 2009, a Final Office action was issued from the PTO, reopening prosecution and citing a new reference, U.S. Patent Application Publication No. 2004/0250131 to Swander et al. Petitioners filed a response on April 17, 2009, in which Claims 27, 30, 31, 33, 34, 38, 39, 42, and 43 were amended. In the response filed April 17, 2009, Petitioners requested withdrawal of the finality of the rejection because the Examiner cited a new ground of rejection.

On April 27, 2009, an Advisory Action issued from the PTO, in which the Examiner refused to enter the claim amendments on the grounds that the amendments raised new issues that would require further consideration and/or search.

On May 13 and 19, 2009, a telephone interview was conducted between the Examiner and the Examiner's supervisor to discuss the withdrawal of the finality of the rejection and entry of the amendments. However, no agreement was reached as far as withdrawing the finality and entering the amendments.

RULES AND PROCEDURES

MPEP § 706.07(a)(R-6) states that:

Final Rejection, When Proper on Second Action:

Due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. Under present practice, second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).*

Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and *make the next Office action final whether or not the claims have been amended*, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b).

Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will **not** be made final if it includes a rejection, on newly

cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

MPEP §706.07(e) [R-6] Withdrawal of Final Rejection, General:

New grounds of rejection made in an Office action reopening prosecution after the filing of an appeal brief require the approval of the supervisory patent examiner. See MPEP § 1002.02(d).

MPEP §1207.04 [R-3] Reopening of Prosecution After Appeal:

The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a). Any after final amendment or affidavit or other evidence that was not entered before must be entered and considered on the merits.

DECISION

A review of the file indicates that the Final rejections issued on June 24, 2008 and February 19, 2009 were both premature. The Examiner reopened prosecution after filing of Appeal Brief by the Petitioner twice and made the rejections Final while introducing new references. Namely, he after the filing of a Notice of Appeal and Brief on Appeal on March 31, 2008, and after the filing of a Notice of Appeal and Pre-Appeal Brief Request for Review on September 24, 2008. In both final Office Actions, the Examiner cited a new reference.

Office action mailed contained new grounds of rejection made final that were **not**: (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed.

For the above stated reasons, the petition is **GRANTED.**

The final Office action mailed February 19, 2009 is hereby vacated and a new Non-final Office action will be mailed in due course. Examiner is to enter and consider the Amendment filed April 17, 2009.

Furthermore, since the petition under 37 CFR § 1.181 requires no fee, Petitioner's Deposit Account No. 19-0741 will be credited $400.00 for the petition fee paid on June 02, 2009.

Any inquiry regarding this decision should be directed to Beatriz Prieto, Quality Assurance Specialist, at (571) 272-3902. A second point of Contact is Kim Huynh at (571)-272-4147.
/id/

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Networking, Multiplexing, Cable and Security

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20060524

DATE : May 24, 2006

TO SPE OF : ART UNIT 2838

SUBJECT : Request for Certificate of Correction on Patent No.: 7,016,203

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: Karl Easthom **Art Unit** 2838

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BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

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JUL 17 2008

OFFICE OF PETITIONS

In re Application of	:	
Gideon SAMID	:	
Application No. 10/852,689	:	DECISION ON PETITION
Filed: May 25, 2004	:	TO WITHDRAW
Attorney Docket No. 113149-00106		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 26, 2007.

The request is **NOT APPROVED**.

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

The request cannot be approved because the attorneys of record were not appointed by Customer Number 27557, the attorneys of record were appointed individually.

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

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

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: GIDEON SAMID
13 TAPIOLA COURT
ROCKVILLE, MD 20850

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10852694	5/25/2004	HAGANO ET AL.	26D-014

EXAMINER
Anthony D. Stashick

ART UNIT	PAPER
3781	20081001

DATE MAILED: 10/2/08

POSZ LAW GROUP, PLC
12040 SOUTH LAKES DRIVE
SUITE 101
RESTON, VA 20191

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

Commissioner for Patents

1. In view of the papers filed June 8, 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). The inventorship of this application has been changed by adding Shinobu Kawabata as an inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781

UNITED STATES PATENT AND TRADEMARK OFFICE

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SAP/BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 04/21/2010

Applicant	: Peter Vignet	: DECISION ON REQUEST FOR
Patent Number	: 7610549	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/852,764	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **508** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Brian M. Hoffman
FENWICK & WEST LLP
Sillicon Valley Center
801 California Street
Mountain View, CA 94041

MAILED

OCT 14 2004

Technology Center 2100

In re Application of:
William E. Sobel
Application No. 10/852,773
Filed: May 21, 2004
For: VERIFICATION OF DESIRED END-STATE USING A VIRTUAL MACHINE ENVIRONMENT

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed September 28, 2004.

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

The request filed September 28, 2004 meets all the requirements. Accordingly the request is **GRANTED**.

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

James R. Matthews

JM Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

cc: SONNENSCEIL NATH & ROSENTHAL LLP
685 Market Street, 6th Floor
San Francisco, CA 94105

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BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

Mail Date: 05/14/2010

Applicant	: Jean-Pierre Messein	: DECISION ON REQUEST FOR
Patent Number	: 7614134	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/852,779	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **354** 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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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/852,794	05/25/2004	2831	900	0267-001-2008CIP3	38	17	1

CONFIRMATION NO. 4760

CORRECTED FILING RECEIPT

OC000000015747246

31108
PAUL J. SUTTON, ESQ., BARRY G. MAGIDOFF, ESQ.
GREENBERG TRAURIG, LLP
200 PARK AVENUE
NEW YORK, NY 10166

Date Mailed: 04/15/2005

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)

Anthony Tufano, North Massapequa, NY;
Dennis A. Oddsen, Eatons Neck, NY;
Leslie Lindenstraus, New York, NY;
Steve Zacharevitz, Northport, NY;
Paul Endres, Plainview, NY;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CIP of 10/236,406 09/06/2002
which is a CIP of 10/163,488 06/06/2002 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 07/26/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/852,794

Projected Publication Date: 06/09/2005

Non-Publication Request: No

BEST AVAILABLE COPY

Early Publication Request: No

Title

Alignment plate for wiring device

Preliminary Class

174

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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PATENT COUNSEL, MS/2061
LEGAL AFFAIRS DEPARTMENT
APPLIED MATERIALS, INC.
P.O. BOX 450A
SANTA CLARA, CA 95052

MAIL

SEP 2 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
David Alumot, et al. :
Application No. 10/852,798 :
Filed: May 24, 2004 :
For: OPTICAL INSPECTION APPARATUS FOR SUBSTRATE DEFECT DETECTION :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 24, 2004, under 37 CFR §1.102(d) to make the application special and treated as pursuant to MPEP §708.02, section II (Infringement),.

A grantable petition under 37 CFR §1.102(d) and MPEP §708.02, section II (Infringement), must be accompanied by the required fee and a statement alleging:

(1) that there is an infringing device or product actually on the market or method in use;
(2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
(3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art. Further, Applicant must provide a copy of each of the references deemed most closely related to the subject matter encompassed by the claims if the references are not already of record.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

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

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Patent Counsel, MS/2061
Legal Affairs Department
APPLIED MATERIALS, INC.
P.O. Box 450A
Santa Clara, CA 95052

COPY MAILED

JUL 25 2008

In re Application of	:	
David Alumot, et. al.	:	
Application No. 10/852,798	:	DECISION ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 002187/C1/PDC/ORBOT	:	

This is a decision on the request to withdraw the Notice of Abandonment filed February 5, 2008, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Keith M. Tackett 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 Mr. Tackett desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

The above-identified application was held abandoned because the period for seeking court review of the decision by the Board of Patent Appeals and Interferences mailed January 28, 2008 had expired and there were no allowed claims. A Notice of Abandonment was mailed January 31, 2008.

Petitioner asserts that the Notice of Abandonment mailed January 31, 2008 be withdrawn as it was premature.

A review of the record shows that the decision by the Board of Patent Appeals and Interferences mailed January 28, 2008 affirmed the examiner's rejection of claims 103-110, 113-115, 133,

135-143, 145 and 151 under 35 U.S.C. § 103(a). The record also shows that a Request for Reconsideration of the Board's Decision was filed on February 27, 2008, which is within two months from the mailing date of the decision by the Board of Patent Appeals and Interferences on January 28, 2008.

As petitioner's response was timely filed within two months from the Board Decision mailed January 28, 2008, this case was not, in fact, abandoned. Therefore, the petition is **GRANTED** and the Notice of Abandonment mailed January 31, 2008, is hereby **vacated**.

The application is being referred to the Technology Center AU 2886 for further processing in accordance with the above decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226. All other inquiries regarding this application should be directed to the Technology Center.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Keith Tackett
Patterson & Sheridan, LLP
3040 Post Oak Boulevard
Suite 1500
Houston, TX 77056--658

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OFFICE OF PETITIONS

AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE
NEW YORK NY 10016

In re Application of :
Cohen, et al. : DECISION ON PETITION
Application No. 10/852,803 :
Filed: May 25, 2004 :
Docket No.: 34304/141 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 7, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned September 30, 2006 for failure to timely reply to the non-final Office action mailed June 29, 2006. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 C.F.R. § 1.136 were timely requested. Notice of Abandonment was mailed March 7, 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.

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 extension of time fee submitted herewith was subsequent to the maximum period obtainable for reply, this fee is unnecessary. Petitioner may request a refund of this fee by writing to the Office of

Finance, Refund Section. A copy of this decision should accompany petitioner's request.

This application 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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GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

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APR 22 2009

OFFICE OF PETITIONS

In re Application of Hillis, et al. Application No. 10/852,804 Filed: May 24, 2004 Attorney Docket No. APPL0044	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 April 6, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 Director may require additional information where there is a question whether the delay was unintentional.

Pursuant to petitioners' authorization, deposit account no. 07-1445 will be charged the $1,410.00 surcharge.

The petition does not satisfy item (1) above.

The reference to add the prior-filed application in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the newly added 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).

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and 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 matter are required.

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

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

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

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JUN 02 2009

OFFICE OF PETITIONS

In re Application of	:	
Hillis, et al.	:	
Application No. 10/852,804	:	DECISION ON PETITION
Filed: May 24, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. APPL0044	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed May 6, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 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 the undersigned at (571) 272-3230. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2167 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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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
10/852,804	05/24/2004	2167	450	APPL0044	20	2

CONFIRMATION NO. 4699

CORRECTED FILING RECEIPT

22862
GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

OC000000036255044

Date Mailed: 06/02/2009

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)

W. Daniel Hillis, Encino, CA;
Bran Ferren, Beverly Hills, CA;

Power of Attorney:

Michael Glenn--30176
Donald Hendricks--40355
Christopher Peil--45005
Florin Corie--46244
Ivy Mei--46925
Julia Thomas--52283

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/529,245 12/12/2003
and is a CIP of 10/246,850 09/17/2002 PAT 6,719,079

Foreign Applications

If Required, Foreign Filing License Granted: 07/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/852,804**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Personalized profile for evaluating content

Preliminary Class

707

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).

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Title 37, Code of Federal Regulations, 5.11 & 5.15

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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).

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

9/1/09

Patent No. :7475079
Inventor(s) :UY Anthony et al.
Issued : 1/6/2009
Title : CUSTOM DUTY AUDIT USING POST ENTRY DATA
Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals col. 1 line 14 is printed in accordance with the record please show evidence of supporting data or amendment. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

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

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

Henry Randall
Decisions & Certificates
of Correction Branch
(703) 756-1571

MARC E. BROWN
McDermott Will & Emery LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 900067

HR

DATE: 1/18/08 APPLICATION NUMBER: 10/852829

COPY MAILED

DOC CODE: PET.DEC.PUBS DOC DATE: JAN 24 2008

OFFICE OF PETITIONS

DELIVER THE ATTACHED FILE/DOCUMENT TO THE TC SCANNIG CENETER

CONTRACTOR: THE ATTACHED FILE/DOCUMENT MUST BE INDEXED AND SCANNED INTO IFW WITHIN 8 WORK HOURS; UPLOADING OF THE SCANNED IMAGES SHOULD OCCUR NO LATER THAN 16 WORK HOURS FOLLOWING RECEIPT OF THIS REQUEST

AFTER SCANNING, ORIGINAL DOCUMENTS SHOULD BE BOXED IN ACCORDANCE WITH INSTRUCTIONS

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OFFICE OF PETITIONS

In re Application of :
Thomas E. Creamer, et al. :
Application No.: 10/852,829 : ON PETITION
Filed: May 25, 2004 :
Attorney Docket No.: BOC9-2004-0014 (1082-36U) :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed September 26, 2007.

The petition is GRANTED.

The application became abandoned for failure to pay the issue fee on or before August 20, 2007. A Notice of Abandonment was mailed on September 17, 2007. In response, on September 26, 2007, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,400 issue and $300 publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

It is noted that the address on the petition differs from address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application is being forwarded to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to further processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: STEVEN M. GREENBERG
CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP
950 PENINSULA CORPORATE CIRCLE
SUITE 3020
BOCA RATON, FL 33487

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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LIU & LIU
444 S. FLOWER STREET SUITE 1750
LOS ANGELES, CA 90071

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JUN 18 2007

OFFICE OF PETITIONS

In re Application of	:	
CHADDHA, Navin et al.	:	
Application No. 10/852,849	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
Attorney Docket No. **1004/213**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 18, 2007.

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

A review of the file record indicates that the power of attorney to LIU & LIU has been revoked by the assignee of the patent application on April 10, 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 Tredelle Jackson at 571-272-2783.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **ASHOK TANKHA**
OF COUNSEL, LIPTON, WEINBERGER & HUSICK
36 GREENLEIGH DRIVE
SEWELL NJ 08080

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P.O. Box 1450
Alexandria, VA 22313-1450
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SNELL & WILMER
ONE ARIZONA CENTER
400 EAST VAN BUREN
PHOENIX, AZ 85004-2202

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OFFICE OF PETITIONS

In re Application of	:	
Thomas Kruse et al	:	
Application No. 10/852,870	:	NOTICE
Filed: May 25, 2004	:	
Attorney Docket No. 27153.2417	:	

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 matter is being referred to the Office of Initial Patent Examination.

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

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44TH FLOOR
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OFFICE OF PETITIONS

In re Application of	:	
Robert Allen Nye	:	
Application No. 10/852,879	:	DECISION ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. LUC-468/Nye 2		

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment mailed, March 7, 2006, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 8, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1500.00; and (3) an adequate statement of unintentional delay.

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178

(October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571) 272-6052 or in his absence, the undersigned at (571) 272-7099.

This application is being referred to Technology Center AU 2612 for appropriate action by the Examiner in the normal course of business on the reply received August 25, 2006.

David Bucci
Petitions Examiner
Office of Petitions

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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
Krancher, et al.
Application No. 10/852,906
Filing Date: 25 May, 2004
Attorney Docket No.: 1939.007US1

DECISION

This is a decision on the petition filed on 5 September, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 18 August, 2005, with reply due absent extension of time on or before 18 November, 2005;

[1] **NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.**

- the instant application went abandoned by operation of law after midnight 18 November, 2005;
- the Office mailed a Notice of Abandonment on 9 March, 2006;
- on 5 September, 2006, Petitioner filed the instant petition (with fee), reply in the form of an amendment (it appears that the papers were improvidently identified in IFW as an informal amendment although there is no indication that the Examiner has made such a determination or given Notice thereof), and made the statement of unintentional delay.

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

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

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

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

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

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

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

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

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

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

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

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

STATUTES, REGULATIONS AND ANALYSIS

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

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[6] And the Petitioner must be diligent in attending to the matter.[7] Failure to do so does not constitute the care required under Pratt,[8] and so cannot satisfy the test for diligence and due care.

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

[3] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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

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

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

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

[8] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[9]))

As to the Allegation
of Unintentional Delay

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

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

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

The instant application is released to to Technology Center 2800 for further processing in due course.

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

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

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

[10] 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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KOLISCH HARTWELL, P.C.
200 PACIFIC BUILDING
520 SW YAMHILL STREET
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JUN 15 2009

OFFICE OF PETITIONS

In re Application of
Erick Lee Kaster
Application No. 10/852,928
Filed: May 24, 2004
Attorney Docket No. PLF.227

ON PETITION

This is a decision on the petition filed May 8, 2009, 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(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.

This application became abandoned September 11, 2006 for failure to file a timely response to the non-Final Office Action mailed June 8, 2006. Accordingly, a Notice of Abandonment was mailed January 8, 2007.

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.

While petitioners argue that the delay in filing a timely response to the June 8, 2006 non-Final Office Action was due to a docketing error, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

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

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

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on September 11, 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 Glenn C. Brown was counsel of record at the time of abandonment, Mr. Brown should explain why this application became abandoned while it was under his control and what efforts he made to further reply. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from Mr. Brown and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding 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 two five 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, including Mr. Tachner, 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).

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

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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520 SW YAMHILL STREET
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DEC 14 2009

OFFICE OF PETITIONS

In re Application of
Erick Lee Kaster
Application No. 10/852,928
Filed: May 24, 2004
Attorney Docket No. PLF.227

ON PETITION

This is a decision on the renewed petition filed September 24, 2009, under 37 CFR 1.137(b)[1], to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned September 11, 2006 for failure to file a timely response to the non-Final Office Action mailed June 8, 2006. Accordingly, a Notice of Abandonment was mailed January 8, 2007. A petition filed May 8, 2009 was dismissed in a decision mailed June 15, 2009 because while petitioners argued that the delay in filing a timely response to the June 8, 2006 non-Final Office Action was unintentional, the entire delay had not been shown to the satisfaction of the Director to be unintentional.[2]

---

1 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).

2 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.

Comes now petitioner with the instant renewed petition and evidence that the entire delay was unintentional.

The response to the non-Final Office Action mailed June 8, 2006 was filed May 8, 2009. All other requirements under 37 CFR 1.137(b) having met, this matter is being referred to Technology Center 3751 for treatment of the response and for further examination in due course.

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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PAULA EVANS
C/O SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
WACKER DRIVE STATION, WILLIS TOWER
CHICAGO IL 60606-1080

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JUL 2 4 2009

OFFICE OF PETITIONS

In re Application of	:	
Antonarakis et al.	:	
Application No. 10/852,943	:	DECISION ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. 27067/2005	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 9, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed January 11, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on February 12, 2007. A Notice of Abandonment was mailed August 21, 2007.

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 two 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 12, 2007. 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 Sonnenschein Nath & Rosenthal LLP, was counsel of record at the time of abandonment, they should explain why this application became abandoned while it was under their control and what efforts were made to further reply of itself and with whom this matter was discussed outside of the practice of Sonnenschein Nath & Rosenthal LLP 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), at Sonnenschein Nath & Rosenthal LLP and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at the practice of Sonnenschein Nath & Rosenthal LLP, 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 two 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 the practice of Sonnenschein Nath & Rosenthal LLP 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:

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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

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). Since the $555.00, three month extension of time fee submitted on March 9, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's credit card in due course.

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) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

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C/O SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
WACKER DRIVE STATION, WILLIS TOWER
CHICAGO IL 60606-1080

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OFFICE OF PETITIONS

In re Application of	:	
Antonarakis et al.	:	
Application No. 10/852,943	:	ON PETITION
Filed: May 25, 2004	:	
Docket No. 27067/2005	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed September 10, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed January 11, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on February 12, 2007. A Notice of Abandonment was mailed August 21, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

---

[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.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

The instant petition lacks item(s) (3).

The renewed petition claims that Alexandra Richardson did not intend to abandon application 10/852,943. However, in Richardson's declaration under item 3, Richardson clearly states "On January 30, 2007, I instructed Sonneschein Nath & Rosenthal LLP, acting on behalf of the University of Geneva in patent matters, of the intention of the The University of Geneva to abandon certain patents, which included the "943 Application, at the next scheduled patent office actions". It would appear that the action was intentional. An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken. See *In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

Where the applicant deliberately permits an application to become abandoned, the abandonment of such application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b).

Petitioner may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.137(a). A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); **(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable**; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

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

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ATTN: Office of Petitions

Any questions concerning this matter may be directed the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

---

[2] See MPEP 711.03(c)(III)(C) and (D).

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OFFICE OF PETITIONS

In re Application of	:	
Antonarakis et al.	:	
Application No. 10/852,943	:	ON PETITION
Filed: May 25, 2004	:	
Docket No. 27067/2005	:	

This is a decision on the second renewed petition under 37 C.F.R. § 1.137(a) and 1.137(b), filed December 14, 2009, to revive the above-identified application.

The petitions are **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed January 11, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on February 12, 2007. A Notice of Abandonment was mailed August 21, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

---

[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.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2] This instant petition lacks item (3) listed above.

Petitioner asserts: (1) "Further, once Sonnenschein Nath & Rosenthal, LLP had confirmed instructions to allow the '943 Application to lapse, it no longer sent any reminders to Ms. Richardson prior to July 11, 2007."; (2) Petitioner submits herewith further evidence indicating that Application 10/852,943 (the'943 Application) "was inadvertently allowed to go abandoned due to a "mistake of fact" and therefore, the abandonment was not intentional."; (3) " However, prior to July 11, 2007, while the '943 Application was still pending, the University of Geneva made a final decision to continue to prosecute the '943 Application." and that "the University of Geneva was entitled to change their mind because the patent was not expressly abandoned and the final deadline to respond to the office Action had yet to pass."; (4) "On April 5, 2007, Ms. Richardson received an email from Sonnenschein Nath & Rosenthal, LLP, confirming that '943 would be abandoned, but that prosecution for another application, U.S. Application 10/543,801 would be continued. Ms Richardson responded to the e-mail in part by stating that she wanted to discuss reactivating some of the foreign applications that had been abandoned based on licensing interest from a company. Ms Richardson believes that at the time the e-mail was sent, she juxtaposed these two applications and thought U.S. Application 10/543,801 was the '943 Application."; and (5) "the University of Geneva was unable to rectify abandonment of the '943 Application because Ms. Richardson understood such Application to be active and pending during her tenure through November 29, 2008." "Ms Richardson conferred this belief when she passed her responsibilities on to Dr. Cookson. This is evidenced by her e-mail dated November 20, 2008 in which she wrote, "when we decided not to accept the conditions offered by the [company], we discussed that we would keep the US patent in prosecution." "Additionally, the patent database, which Ms. Richardson was in charge of updating, indicated that the '943 Application was pending."

The showing of the record is that the delay resulting in the abandonment of this application is due to an intentional decision by a responsible party, Richardson. Richardson, acting on behalf of the University of Geneva in patent matters, instructed Sonneschein Nath & Rosenthal LLP, to abandon Application 10/852,943 on January 20, 2007 (no copy of the Richardson January 20, 2007 document was submitted by petitioner). An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken. See *In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

On April 5, 2007, Richardson received an email from Sonnenschein Nath & Rosenthal,LLP, confirming that '943 application would be abandoned. Richardson states that "We rely on our outside counsel for such information." Such information was provided by Sonnenschein Nath & Rosenthal LLP on April 5, 2007. The Richardson declaration further states that on or around April 3-5, 2007 "at the time I believe I gave **oral** instructions to maintain what I thought was the '943 Application" and "Therefore, I authorized prosecution to continue for U.S. Application No. 10/543,801 because I believed it covered the technology in the '943 Application." Richardson goes on to state "I now realized that I thought the U.S Application 10/543, 801 was the '943 Application. Additionally, in her April 24, 2007 e-mail response to Sonnenschein Nath & Rosenthal LLP (Exhibit B), Richardson states "I would like to discuss with you the possibilities of re-activation of the abandoned applications, and specifically the EP application based on a request from Sequenom." and "finding out if there are any possibilities to reactivate the JP and CA applications". In response to this e-mail Richardson sends an e-mail on April 24, 2007 "RE:US patent application 10/852,943", after already being notified of

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[2] See MPEP 711.03(c)(III)(C) and (D).

continuing prosecution of juxtaposed Application 10/543,801 and desiring additional information on reviving the foreign applications based on licensing negotiations. Therefore, the basis for the possibilities of re-activation of these abandoned applications deals with licensing negotiations. Further, the licensing negotiations discussed in Richardson's e-mails on June 7, 2007 (Exhibit C)(of which only page 1 of 6 was submitted) and on June 18, 2007 (Exhibit D)(of which only pages 1-2 of 5 were submitted) clearly demonstrate a change of purpose because of the licensing negotiations.

It is not what Richardson believed or may have believed that is relevant here. What is relevant is the actions taken by Richardson with respect to the '943 application. While Richardson believes she had oral conversations with Dennis Harvey of Sonnenschein Nath & Rosenthal, LLP where she asked to maintain the '943 application there is no evidence that this occurred. As numerous communications occurred between Richardson and Sonnenschein Nath & Rosenthal, LLP, why was this alleged conversation not followed by a confirmatory letter? Furthermore, none of the e-mails submitted as evidence request that Sonnenschein Nath & Rosenthal, LLP file a response in the '943 application nor do they counterman the request to let the '943 application go abandoned. Additionally, there is no correspondence from Sonnenschein Nath & Rosenthal, LLP that indicates that they were responding to the Office action in the '943 application.

The abandonment of an application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b), where the applicant deliberately permits the application to become abandoned. See *Application of G*, 11 USPQ2d at 1380. 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). An intentional delay resulting from a deliberate course of action chosen by the applicant is not affected by:

(A) the correctness of the applicant's (or applicant's representative's) decision to abandon the application or not to seek or persist in seeking revival of the application;

(B) the correctness or propriety of a rejection, or other objection, requirement, or decision by the Office; or

(C) the discovery of new information or evidence, or other change in circumstances subsequent to the abandonment or decision not to seek or persist in seeking revival.

Obviously, delaying the revival of an abandoned application, by a deliberately chosen course of action, until the industry or a competitor shows an interest in the invention is the antithesis of an "unavoidable" or "unintentional" delay. An intentional abandonment of an application, or an intentional delay in seeking the revival of an abandoned application, precludes a finding of unavoidable or unintentional delay pursuant to 37 CFR 1.137. See *Maldague*, 10 USPQ2d at 1478.

The showing of the record shows that the University of Geneva's patent database does not keep track of upcoming deadlines or due dates. Therefore, Richardson's opinion that '943 was still pending during her tenure through November 29, 2008 based on information in the database is not deemed persuasive. Richardson's December 11, 2009 Declaration states "The database is accurate, reliable and up to date. The patent database does not keep track of upcoming deadlines or due dates for pending applications or patents. We rely on our outside counsel for such information." Such information was provided by Sonnenschein Nath & Rosenthal LLP on April 5, 2007 but not entered into the database by the responsible party, Ms. Richardson.

Further, petitioner has submitted an alternative petition under 37 CFR 1.137(a). However, the "unavoidable" delay is the epitome of "unintentional" delay. Thus, an intentional delay precludes revival under 37 CFR 1.137(a) ("unavoidable" delay) or 37 CFR 1.137(b) ("unintentional" delay). See *Maldague*, 10 USPQ2d at 1478.

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

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

Any questions concerning this matter may be directed the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

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JAMES RAY & ASSOCIATES
2640 PITCAIRN ROAD
MONROEVILLE PA 15146

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OFFICE OF PETITIONS

In re Application of	:
Jacques Lobry	:
Application No. 10/852,947	: DECISION GRANTING PETITION
Filed: May 24, 2004	: UNDER 37 CFR 1.137(b)
Attorney Docket No. CBL 04122	:

This is a decision on the petition under 37 CFR 1.137(b), filed August 11, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Nonfinal Rejection of September 26, 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 1772.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/25/09

TO SPE OF : ART UNIT 2169

SUBJECT : Request for Certificate of Correction for Appl. No.: 10852969 Patent No.: 7370059 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:

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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: _____

JAMES K TRUJILLO
SUPERVISORY PATENT EXAMINER
SPE

2169
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 10/852986

Paper No.: _____

DATE : 12/13/05

TO SPE OF : ART UNIT 2832

SUBJECT : Request for Certificate of Correction on Patent No.: 6883696 B1

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

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

Virginia Tolbert

Thank You For Your Assistance

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

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

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

Comments:

ELVIN ENAD
SUPERVISORY PATENT EXAMINER
082464

SPE

2832
Art Unit

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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THELEN REID BROWN RAYSMAN &
STEINER LLP
PO BOX 640640
SAN JOSE CA 95164-0640

COPY MAILED

SEP 03 2008

OFFICE OF PETITIONS

In re Application of	:	
Antognini et al.	:	
Application No. 10/852989	:	
Filing or 371(c) Date: 05/25/2004	:	ON PETITION
Attorney Docket Number:	:	
3379/3A CON	:	

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

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed January 12, 2007. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on January 26, 2008. A Notice of Abandonment was mailed September 20, 2007.

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 the petition includes (1) the reply in the form of an Amendment; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address (and revocation of power of attorney) 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 referred to Technology Center Art Unit 3694 for processing of the Amendment filed with the petition in due course.

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

CC: WALTER G. ANTOGNINI/THOMAS C. ANTOGNINI
440 EAST 20 STREET
APT. 3G
NEW YORK, NY 10009

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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BAKER & DANIELS LLP
202 South Michigan Street
Suite 1400
South Bend, IN 46601

Mail Date: 04/21/2010

Applicant	: Brett C. Justice	: DECISION ON REQUEST FOR
Patent Number	: 7654050	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/852,993	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1367** 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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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/852,995	05/25/2004	2157	775	66957	5	37	7

CONFIRMATION NO. 4570

UPDATED FILING RECEIPT

OC000000013600494

27148
POLSINELLI SHALTON WELTE SUELTHAUS P.C.
700 W. 47TH STREET
SUITE 1000
KANSAS CITY, MO 64112-1802

Date Mailed: 08/23/2004

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)

Gennady Sorokopud, Netanya, ISRAEL;
Aharon Satt, Haifa, ISRAEL;
Liron Langer, Haifa, ISRAEL;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 07/21/2004

Projected Publication Date: 12/01/2005

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Real Time Streaming Protocol (RTSP) proxy system and method for its use

Preliminary Class
709

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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SEP 14 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Patent Counsel, MS/2061
Legal Affairs Department
APPLIED MATERIALS, INC.
P.O. BOX 450A
Santa Clara, CA 95052

In re Application of :
David Alumot, et al. :
Application No. 10/852,996 :
Filed: May 24, 2004 :
For: OPTICAL INSPECTION METHOD FOR SUBSTRATE DEFECT DETECTION :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 24, 2004, under 37 CFR §1.102(d) to make the application special and treated as pursuant to MPEP §708.02, section II (Infringement),.

A grantable petition under 37 CFR §1.102(d) and MPEP §708.02, section II (Infringement), must be accompanied by the required fee and a statement alleging:

(1) that there is an infringing device or product actually on the market or method in use;
(2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
(3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art. Further, Applicant must provide a copy of each of the references deemed most closely related to the subject matter encompassed by the claims if the references are not already of record.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE 4/14/09

Paper No.: —

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/852996 Patent No.: 7499583 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
703-308-9390 ext. 113

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

The corrections are approved. /Aaron Carter/ Primary Examiner, AU 2624

/Bhavesh Mehta/ SPE, TC 2600 — **SPE**

2624 — **Art Unit**

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FOX ROTHSCHILD, LLP
997 LENOX DRIVE
LAWRENCEVILLE NJ 08648

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APR 10 2007

OFFICE OF PETITIONS

ON PETITION

In re Application of :
William F. Kaemmerer :
Application No. 10/852,997 :
Filed: May 25, 2004 :
Attorney Docket No. 4819.00018/P11089.02 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 21, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 5, 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). A 1-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 August 6, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $790, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 1635 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petitions Examiner
Office of Petitions

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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

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NOV 23 2004

OFFICE OF PETITIONS

In re Application of
Feutz, Rarick & Rajakrishna
Application No.: 10/853,012
Filed: May 24, 2004
Attorney Docket No.: 2376.2010-000
For: METHOD AND SYSTEM FOR AUTODISCOVERY OF A NETWORK PATH

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed September 24, 2004 (certificate of mailing date September 22, 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 May 24, 2004 without an executed declaration. On July 22, 2004, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, requiring filing fees, an executed oath/declaration, and a surcharge for their late filing. In response, on September 24, 2004 (certificate of mailing date September 22, 2004), petitioner filed, *inter alia*, a declaration executed by 1 of 3 joint inventors, and a Rule 47 petition with the required $130 fee. The petition is signed by Attorney F. James Coe. The petition contains persuasive evidence that show non-signing inventors Feutz and Rajakrishna were mailed the application papers. Attorney Coe states that the inventors orally refused to sign the declaration during conversations with Lawrence M. Cho, Senior Patent Counsel for a Tellabs Operations, Inc., a party in interest.

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), Applicant has failed to establish that the inventors have refused to sign the declaration.

As stated in MPEP 409.03(d), "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."

With respect to the presentation of the papers to the non-signing inventors, Janet Missig of Tellabs Operations, Inc. has not provided a statement of the presentation of the papers. However, the petition contains exhibits that show a letter and application papers were mailed to the inventors. Unfortunately, per the petition, the non-signing inventors spoke to Mr. Cho, not to Attorney Coe regarding their refusal to join. Proof of the refusal should be made by a statement of someone with first hand knowledge of the events. Mr. Cho must provide a statement as to the details of the refusal.

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
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306 – 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

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 7 2005

OFFICE OF PETITIONS

In re Application of
Feutz, Rarick & Rajakrishna
Application No.: 10/853,012
Filed: May 24, 2004
Attorney Docket No.: 2376.2010-000
For: METHOD AND SYSTEM FOR AUTODISCOVERY OF A NETWORK PATH

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the reconsideration petition under 37 CFR 1.47(a), filed January 24, 2005 (certificate of mailing date January 21, 2005).

The petition is **GRANTED**.

Petitioner has shown that non-signing inventors Feutz and Rajakrishna have refused to join in the filing of the instant application after being presented with the application papers. Specifically, the declaration of Attorney Lawrence M. Cho, Senior Patent Counsel for a Tellabs Operations, Inc., a party in interest, establishes that non-signing inventors Feutz and Rajakrishna were mailed the application papers and the inventors subsequently refused to sign the declaration during conversations with him. Petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

The application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). The application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to Technology Center 2125 for examination in due course.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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GARY FEUTZ
77 CENTURY DRIVE
ROSELLE, IL 49512

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MAR 07 2005

OFFICE OF PETITIONS

In re Application of
Feutz, Rarick & Rajakrishna
Application No.: 10/853,012
Filed: May 24, 2004
Attorney Docket No.: 2376.2010-000
For: METHOD AND SYSTEM FOR AUTODISCOVERY OF A NETWORK PATH

LETTER

Dear Mr. Feutz:

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 (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

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www.uspto.gov

DEVINDRAN RAJAKRISHNA
5438 WEST HEATHWOOD DRIVE
KENTWOOD, MI 49512

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MAR 07 2005

OFFICE OF PETITIONS

In re Application of
Feutz, Rarick & Rajakrishna
Application No.: 10/853,012
Filed: May 24, 2004
Attorney Docket No.: 2376.2010-000
For: METHOD AND SYSTEM FOR AUTODISCOVERY OF A NETWORK PATH

LETTER

Dear Mr. Rajakrishna:

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 (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

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Paper No.

William J. McNichol, Jr.
REED SMITH SHAW & McCLAY LLP
2500 ONE LIBERTY PLACE
PHILADELPHIA, PA 19103-7301

COPY MAILED

JUN 25 2004

OFFICE OF PETITIONS

In re Application of	:	
James Veligdan	:	
Application No. 10/853,020	:	DECISION GRANTING
Deposited: May 24, 2004	:	PETITION
Attorney Docket No. 00-40243-US-C1	:	

This is a decision on the "PETITION FOR FILING DATE UNDER 37 C.F.R. § 1.10(c)," filed June 4, 2004, requesting that the application papers in the above-identified application be considered deposited on May 24, 2004, rather than on May 25, 2004.

Petitioner maintains that the above-identified application was deposited in compliance with 37 C.F.R. § 1.10 on May 24, 2004. In support thereof, petitioner submits a true copy of the transmittal sheet for the application, which references Express Mail mailing label No. EV342401201; a copy of their return postcard receipt; and a true copy of the Express Mail mailing label used, No. EV342401201US.

Having reviewed the evidence, it is concluded that petitioner has shown a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by other official USPS notation. The petition was filed promptly within the meaning of §1.10(c)(1). The transmittal sheet as submitted on petition with the Express Mail No. thereon is a true copy of the transmittal of record and identifies the correspondence currently accorded a filing date of May 25, 2004. Thus, petitioner has shown that the Express Mail mailing label number was placed on the correspondence prior to the original mailing date. A review of the true copy of the Express Mail mailing label further indicates that a handwritten "date-in" of May 25, 2004. However, the Express Mail mailing label also bears an official USPS date-stamp of May 24, 2004, consistent with petitioner's claim of deposit on that date. (Petitioner is reminded that if one waits to the last minutes of a day to file an application than one assumes the risk of not receiving the desired filing date).

A review of the application papers received by way of deposit into Express Mail service on May 24, 2004, reveals that they

included a specification, claims and drawings. Accordingly, those papers were entitled to a filing date of May 24, 2004.

In view thereof, the petition is **GRANTED**.

No petition fee is necessary and none has been charged.

The Office of Initial Patent Examination has been advised that this application should be processed with a filing date of May 24, 2004.

Telephone inquiries specific 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

TOWNSEND TOWNSEND & CREW, LLP
TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

COPY MAILED

DEC 0 4 2007

OFFICE OF PETITIONS

In re Application of	:	
PIK, et al.	:	
Application No. 10/853,024	:	DECISION ON PETITION
Filed: May 21, 2004	:	TO WITHDRAW
Attorney Docket No. **2003P00958US**	:	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 16, 2007.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to **TOWNSEND TOWNSEND & CREW, LLP** has been revoked by the assignee of the patent application on October 12, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **SAP AG C/O BUCKLEY, MASCHOFF & TALWALKER LLC**
50 LOCUST AVENUE
NEW CANAAN, CT 06840

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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FITZPATRICK CELLA HARPER & SCINTO
1290 Avenue of the Americas
NEW YORK, NY 10104-3800

Mail Date: 04/21/2010

Applicant	: Mary Collins	: DECISION ON REQUEST FOR
Patent Number	: 7618632	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/853,032	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **331** 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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MORGAN & FINNEGAN, L.L.P.
3 WORLD FINANCIAL CENTER
NEW YORK NY 10281-2101

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MAY 1 0 2007

OFFICE OF PETITIONS

In re Patent No. 7,055,766	:	
Application No. 10/853,036	:	
Filed: May 25, 2004	:	ON PETITION
Issued: June 6, 2006	:	
Attorney Docket No. 0831-4004US1	:	

This is a decision on the request filed November 15, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to add the name of the omitted assignee to the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to Petitions Examiner Liana Walsh at (571) 272-3206. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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STEPHEN C. KAUFMAN
INTELLECTUAL PROPERTY LAW DEPT.
IBM CORPORATION
P.O. BOX 218
YORKTOWN HEIGHTS NY 10598

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MAR 19 2008

OFFICE OF PETITIONS

In re Application of	:
Anatoly Koyfman et al	:
Application No. 10/853,041	: DECISION GRANTING PETITION
Filed: May 25, 2004	: UNDER 37 CFR 1.137(b)
Attorney Docket No. IL920030058US1	:

This is a decision on the petition under 37 CFR 1.137(b), filed July 31, 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 and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of March 8, 2007, 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 matter is being referred to the Office of Data Management.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

SUZANNE EREZ
IBM LABS, HAIFA UNIVERSITY
MOUNT CARMEL, 31905,
HAIFA, ISRAEL

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LARSON AND LARSON
11199 69TH STREET NORTH
LARGO FL 33773

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OFFICE OF PETITIONS

In re Application of :
Smits et al. :
Application No. 10/853,043 : ON PETITION
Filed: May 25, 2004 :
Attorney Docket No. 1521.4 :

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**.

Additionally, 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. Additionally, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: George J. Jakobsche
Sunstein Kann Murphy & Timbers LLP
125 Summer Street
Boston, MA 02110-1618

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PRICE, HENEVELD, COOPER, DEWITT &
LITTON, LLP
695 KENMOOR S.E.
P.O. BOX 2567
GRAND RAPIDS MI 49501-2567

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MAY 07 2007

OFFICE OF PETITIONS

In re Application of	:	
Marcus Turner et al	:	
Application No. 10/853,046	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. 81098913	:	

This is a decision on the petition, filed May 7, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 27, 2007 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 3611 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

JUN 22 2010

OFFICE OF PETITIONS

In re Patent of Ziegler	:	DECISION ON APPLICATION
Patent No. 7,491,211	:	FOR RECONSIDERATION OF
Issue Date: February 17, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/853,052	:	AND NOTICE OF INTENT TO
Filing Date: May 25, 2004	:	ISSUE CERTIFICATE OF
Atty Docket No. 09423.0054-00000	:	CORRECTION

This is a decision on the petition filed on March 31, 2009, which is being treated as a petition under 37 C.F.R. § 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 three hundred three (1303) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand three hundred three (1303)** days.

Patentee is correct that the over 3 year period is 634 days. However, patentee's calculation does not account for the filing of a Notice of Appeal on August 19, 2008, and the subsequent filing of a Notice of Allowance on October 7, 2008. The 50 days of the over three year period consumed by appellate review are not included in the B delay. *See* 35 U.S.C. § 154(b)(1)(B)(ii). Further, considering the appeal period, the Office has determined that the period of overlap is 61 days. Considering the excluded days and the overlap, the patent term adjustment is increased by 523 ((634 - 50) - 61) days to 1303 days.

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred three (1303)** days.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,491,211 B2

DATED : **February 17, 2009** **DRAFT**

INVENTOR(S) : Ziegler

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 780 days

Delete the phrase "by 780 days" and insert – by 1303 days--

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ROSENBERG, KLEIN & LEE
3458 ELLICOTT CENTER DRIVE-SUITE 101
ELLICOTT CITY MD 21043

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OFFICE OF PETITIONS

In re Application of :
Fischell, et al. :
Application No. 10/853,058 : DECISION ON PETITION
Filed: May 26, 2004 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. MR3065-20 :

This is a decision on the petition under 37 CFR § 1.78(a)(3) , filed September 15, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for benefit of priority to prior-filed Application No. 10/251,505.

The petition is **DISMISSED AS MOOT.**

The petition is accompanied by a substitute declaration that refers to the prior-filed application. While a reference to the prior-filed nonprovisional application was not included in an Application Data Sheet (ADS) or in the first sentence of the specification following the title as required by the rules, an improper reference to the patent that corresponds to the nonprovisional application, nevertheless, was made in the specification filed on May 26, 2004.

Where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear in the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). On the other hand, if the USPTO does not note the claim for priority to the prior-filed application submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(3).[1] In the present case, the Office noted the claim for priority to the prior-filed application in the specification, as shown by its inclusion on the filing receipt.

In view of the above, the $1,410.00 petition fee submitted is unnecessary and will be refunded to petitioners' deposit account in due course.

Even though the Office has recognized the benefit claim by entering it into the Office's database and including it on applicants' filing receipt, the benefit claim is not a proper

[1] *Note* MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

benefit claim under 35 U.S.C. 120 and 37 CFR 1.78 unless the reference is included in an ADS or in the first sentence of the specification and all other requirements are met. If applicants desire to claim the benefit of a prior-filed application, a specific reference to the prior-filed nonprovisional application in compliance with 37 CFR 1.78(a) must be included in the first sentences of the specification following the title or in an application data sheet. It is not sufficient to file a substitute declaration in lieu of an amendment to the specification or an ADS.

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3230. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3762 for consideration of the RCE and amendment filed on December 11, 2008. The examiner will not consider applicants' entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application until a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) is included in the first sentences of the specification following the title or in an ADS.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

Mail Date: 04/21/2010

Applicant	: Colin Knight	: DECISION ON REQUEST FOR
Patent Number	: 7661918	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/853,065	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/24/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **847** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/853,071	05/25/2004	Rick R. Rothwell	200314284-1	4718

7590 04/09/2008
HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER
CRUZ, IRIANA

ART UNIT	PAPER NUMBER
2625	

NOTIFICATION DATE	DELIVERY MODE
04/09/2008	ELECTRONIC

DECISION DISMISSING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is dismissed.

The express abandonment will **not** be recognized for the reason(s) indicated below:

1. ☐ The petition was not filed in sufficient time to permit the appropriate officials to recognize the abandonment before an examination has been made of the application. See 37 CFR 1.138(d).
2. ☐ The petition was not signed by a party authorized by 37 CFR 1.33(b)(1), (3) or (4).
3. ☐ The application is not an application filed under 35 U.S.C. 111(a) on or after December 8, 2004.
4. ☑ The petition for express abandonment under 1.138(d) is dismissed because the applicant did not pay any search fee and excess claims fees in the above-identified application.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Tom Farmer

Patent Publication Branch
Office of Data Management

FORM PET651D (Rev. 08/07)

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MORRISON & FOERSTER, LLP
555 WEST FIFTH STREET
SUITE 3500
LOS ANGELES, CA 90013-1024

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OFFICE OF PETITIONS

In re Application of	:	
KING, Eric et al.	:	
Application No. 10/853,076	:	DECISION ON PETITION
Filed: May 25, 2004	:	TO WITHDRAW
Attorney Docket No. **480062004900**	:	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 05, 2008.

The request is **NOT APPROVED** because it is 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 May 19, 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 Michelle R. Eason at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **RUTAN & TUCKER, LLP.**
611 ANTON BLVD
SUITE 1400
COSTA MESA CA 92626

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LADAS & PARRY LLP
224 SOUTH MICHIGAN AVENUE
SUITE 1600
CHICAGO IL 60604

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JUL 20 2007

OFFICE OF PETITIONS

In re Application of	:	
Kim et al.	:	
Application No. 10/853080	:	DECISION ON PETITION
Filed: 05/25/2004	:	
Atty Docket No. CU-3752 RJS/WWP	:	
	:	

This is a decision on the petition filed on 29 May, 2007, under 37 CFR 1.137(b), [1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 8 December, 2006, for failure to timely submit a proper reply to the final Office action mailed on 7 September, 2006, which set a three (3) month shortened statutory period for reply. An amendment after final rejection was filed on 7 December, 2006. On 9 January, 2007, a Notice of

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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)).

Non-Compliant Amendment was mailed, stating the amendment was non-compliant with 37 CFR 1.121 or 1.4, and that no new time period was provided. A new amendment after final was filed on 18 January, 2007, and an Advisory Action Before the Filing of an Appeal Brief was mailed on 20 April, 2007. The present petition precedes the mailing of Notice of Abandonment.

Petitioner has filed a Request for Continued Examination (RCE) and has indicated that the previously-filed amendment is required reply under 37 CFR 1.114.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.[2] The three (3)-month extension request filed on 29 May, 2007, was submitted more than five (5) months after the end of the period for reply to the final Office action mailed on 7 September, 2006, and therefore is unnecessary. The extension of time fee paid on 29 May, 2007, will be credited to counsel's deposit account as authorized.

This application is being referred to Technology Center 1774 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

[2] See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

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401 9TH STREET, NW
SUITE 900
WASHINGTON DC 20004-2128

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In re Application of :
Stefik, et al. :
Application No. 10/853,115 : ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. 111325-025600 :
For: SYSTEM FOR CONTROLLING THE DISTRIBUTION AND USE OF DIGITAL WORKS USING DIGITAL TICKETS

This is a decision on the petition under 37 CFR 1.181, filed June 12, 2007, 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 Notice of Allowability, mailed September 5, 2006, which set forth a non-extendable three (3) month period for reply. The Office contended that this application became abandoned on December 6, 2006 for failure to reply. A Notice of Abandonment was mailed on April 24, 2007.

Petitioners assert the application did not become abandoned because while the September 5, 2006 Notice of Allowability stated that corrected drawings were required, no additional information regarding required changes to the drawings was included in the Notice of Allowability. Petitioners assert that the drawings were acceptable and no drawing requirements had ever been made in connection with the application.

Petitioners have provided a declaration from Kisha L. Avery that states on October 6, 2006 she contacted the examiner to inquire about the September 5, 2006 Notice of Allowability and was informed that a checkmark was erroneously placed in the box that indicated corrected drawings were due upon payment of the issue fee. Petitioners are reminded that business with the Office must be carried on in writing. 37 CFR 1.2. Oral advice from Office employees is not binding. See In re Sivertz, 227 USPQ 255,256 (Comm'r Pat. 1985). However, it is noted that an Interview Summary (it appears undated), signed by the examiner, states that on May 22, 2007 an interview was conducted with petitioners and that the application was improperly abandoned

because the drawings were proper and there was no need to re-file the drawings. Therefore, no changes to the drawings were required by the Notice of Allowability, mailed September 5, 2006.

The petition under 37 CFR 1.181 is **granted**, the holding of abandonment is withdrawn, and the April 24, 2007 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 Publications Division for processing into a patent.

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

COMMISSIONER FOR PATENTS
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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

MAILED
DEC 14 2005
TECHNOLOGY CENTER 2100

In re Application of: AOSHIMA, et al.
Application No. 10/853,157
Filed: May 26, 2004
For: SERVER AND METHOD FOR MANAGING VOLUME STORING DIGITAL ARCHIVE

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 23 September 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission meets all the criteria set out above. Accordingly, the petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in MPEP § 708.02, Section VIII.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

ds

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

7+

Paper No.: _____

DATE : December 20, 2006

TO SPE OF : ART UNIT 3726

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/853170 Patent No.: 7,137,198 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: _____

DAVID P. BRYANT
SUPERVISORY PATENT EXAMINER

SPE

3726
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MCDERMOTT, WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

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OCT 2 8 2004

OFFICE OF PETITIONS

In re Application of
Naoki Yokoi
Application No. 10/853,203
Filed: May 26, 2004
Attorney Docket No 67161-163

DECISION GRANTING PETITION

This is a decision on the petition filed October 12, 2004, in response to the "Notice of Omitted Items" mailed August 13, 2004, which is treated under 37 CFR 1.182.

The instant application was filed May 26, 2004 and a filing date was accorded. However, the Notice indicated that Figures 41-44 described in the specification appeared to have been omitted.

Petitioner asserts that Figures 41-44 were among the papers filed on May 26, 2004, and submits, *inter alia*, a "legible" postcard receipt in evidence thereof. The postcard receipt, identifies the application and acknowledges, inter alia, that the application included forty-four (44) sheets of drawings and bears a United States Patent and Trademark Office date-stamp of May 26, 2004. However, only forty (40) sheets of drawing figures is of record and while the postcard did not specifically itemize the number of Figures, it is obvious that Figures 41-44 were on sheets 41 through 44. Additionally, the postcard receipt lacks any notation of non-receipt of any item listed. In view thereof, the petition is **GRANTED.**

Given the basis for granting the petition, the petition fee paid in the amount of $130.00 is not required and will be credited to deposit account no. 50-0417.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing, using the application papers received in the Office on May 26, 2004 and Figures 41-44 submitted on petition October 12, 2004.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

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SEP 2 1 2004

OFFICE OF PETITIONS

In re Application of
Kano, et al
Application No. 10/853,215
Filed: May 26, 2004
Attorney Docket No. Q81651

DECISION GRANTING PETITION

This is a decision on the petition, filed August 2, 2004, requesting, in effect, withdrawal of the Notice of Incomplete Nonprovisional Application (Notice), mailed July 27, 2004. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on May 26, 2004. On July 27, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice informing petitioners that a filing date had not been accorded to the application papers deposited on May 26, 2004 because the specification and at least one claim omitted.

In response to the Notice, petitioners timely filed the present petition. Petitioners request that the application be accorded a filing date of May 26, 2004 on the basis that a specification and claims were received in the Patent and Trademark Office (PTO) on May 26, 2004. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination date stamp citing May 26, 2004 as the date of receipt. The postcard lists, *inter alia*, that the filing included 42 pages of specification, including 45 claims, and one page of abstract.

The return postcard constitutes *prima facie* evidence that a specification and claims were filed on May 26, 2004. MPEP 503. Accordingly, the request is **GRANTED**.

Pursuant to petitioner's authorization, deposit account no. 19-4880 will be credited the $130.00 fee submitted with the instant petition.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **May 26, 2004**, using 42 pages of specification and 1 page of abstract supplied with the petition. OIPE will mail a corrected filing receipt in due course.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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LOWE HAUPTMAN HAM & BERNER, LLP
1700 DIAGONAL ROAD
SUITE 300
ALEXANDRIA VA 22314

7/11/08

In re Application of: MITSUI et al.
Appl. No.: 10/853,238
Filed: May 26, 2004
For: DISPOSABLE WEARING ARTICLE

: DECISION ON PETITION

This is a decision on the petition filed on May 20, 2008 by which petitioners request reconsideration of the examiner's decision to withdraw claims 4 and 21 as presented in the December 5, 2007 amendment from consideration as being amended into a non-elected species. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed as being untimely filed.

Review of the record indicates claims 4 and 21, as amended with the filing of the RCE on July 24, 2007 were withdrawn by the examiner on September 5, 2007. The office action explains the claimed lengths L1, L2 being longer than that of L3 is not commensurate in scope with the elected invention. Applicant traversed the withdrawal in the December 5, 2007 response and the examiner maintained the withdrawal in the final rejection of February 20, 2008. Further, review of the record shows that the instant petition was filed three months after the mailing date of the final Office action withdrawing the aforementioned claims. Pursuant to 37 CFR 1.181(f), the petition is not timely filed since the petition was not filed within two months of the action complained of. As the petition was not timely filed, the relief requested will not be granted.

Petitioner may seek relief by way of a further request for reconsideration before the primary examiner. Questions regarding this decision may be directed to J. Harrison, Special Programs Examiner at 571-272-4449.

PETITION DISMISSED

Karen M. Young
for Frederick R. Schmidt, Director
Technology Center 3700

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Woodcock Washburn LLP
Cira Centre 12th Floor
2929 Arch Street
Philadelphia, PA 19104-2891

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MAY 14 2007

OFFICE OF PETITIONS

In re Application of	:	
Michael D. Bamburak	:	
Application No. 10/853,246	:	DECISION ON PETITION
Filed: May 26, 2004	:	TO WITHDRAW
Attorney Docket No. CING-0046/252.US.C1(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 8, 2006.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Christopher M. Arena on behalf of all attorneys of record.

All attorneys/agents have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

There is no outstanding Office action at this time.

Telephone inquiries concerning this decision should be directed to Terri Williams at 571-272-2991.

T. Williams
Terri Williams
Petitions Examiner
Office of Petitions

cc: **MICHAEL D. BAMBURAK**
7405 SANDAL FOOT WAY
COLUMBIA, MD 21046

cc: **PAUL, HASTINGS, JANOFSKY & WALKER LLP**
875 - 15TH STREET, N.W.
WASHINGTON, DC 20005

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
10/853,246	05/26/2004	Michael D. Bamburak	CING-0046/252.US.C1(1)

CONFIRMATION NO. 6750

OC000000023847456

54499
WOODCOCK WASHBURN LLP
CIRA CENTRE 12th Floor
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

Date Mailed: 05/14/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/08/2006.

- 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.

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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Paper No. None

MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN VA 22102-3833

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FEB 13 2006
OFFICE OF PETITIONS

In re Application of	:	
Toshiaki Wakisaka et al.	:	
Application No. 10/853,264	:	
Filed: May 26, 2004	:	DECISION ON PETITION
Attorney Docket No. XA-9734A	:	UNDER 37 C.F.R. §1.181(A)
Title: DOUBLE-WRAP BRAKE BAND	:	
APPARATUS	:	

This is a decision on the Petitioner's "request to vacate notice of abandonment," which is properly treated as a petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on December 22, 2005.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed May 24, 2005, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on August 25, 2005. A notice of abandonment was mailed December 1, 2005.

With the present petition, Petitioner included a response to the Office Action of May 24, 2005. It is noted that a duplicate of the same has been located in the electronic file, and it is clear that a response was received on November 28, 2005, along with an authorization to charge any required extension of time to Petitioner's Deposit Account. It is noted that the response contains a certificate of mailing dated November 23, 2005.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a timely response was timely submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

Technology Center 3600 will be notified of this decision.

The required three-month extension of time has been charged to Petitioner's Deposit Account, as authorized in the response.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/28/06

Paper No.: _____

TO SPE OF : ART UNIT 2854

SUBJECT : Request for Certificate of Correction for Appl. No.: 10853269 Patent No.: 6971811

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**.

Monyma

Certificates of Correction Branch

703-308-9390 ext. 115

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☐ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☒ **Denied** — State the reasons for denial below.

Comments: The claim for priority does not comply with the provisions of 37 CFR 1.78.

Andrew Hirshfeld — SPE

2854 — Art Unit

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Technology Center 2100

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

In re Application of: SHINOZAKI, et al.
Application No. 10/853,277
Filed: May 26, 2004
For: STORAGE SYSTEM AND REMOTE COPY METHOD FOR STORAGE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 26 October 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission meets all the criteria set out above. Accordingly, the petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in MPEP § 708.02, Section VIII.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

ds

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MAIL

JUL 1 3 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

REED SMITH LLP
3110 FAIRVIEW PARK DRIVE
SUITE 1400
FALLS CHURCH, VA 22042

In re Application of: HOMMA, et al.
Application No. 10/853,289
Filed: May 26, 2004
For: DISK ARRAY APPARATUS

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 25 May 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

MPEP §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission meets all the criteria set out above. Accordingly, the petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in MPEP § 708.02, Section VIII.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

ds

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 27, 2009

TO SPE OF : ART UNIT 2619
SUBJECT : Request for Certificate of Correction for Appl. No.: 10/853294 /7437482

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

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.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

2465

SPE — Art Unit

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 7, 2008

TO SPE OF : ART UNIT 1756

SUBJECT : Request for Certificate of Correction for Appl. No 10/853311 patent no7223511

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: _____

/Mark F. Huff/ — **SPE**

1795 — **Art Unit**

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MAR 09 2005

Attention of James D. Withers
WITHERS & KEYS, LLC
P.O. Box 2049
McDonough GA 30253

In re Application of	:	
Joan Jones et al	:	
Serial No.: 10/853,324	:	DECISION ON PETITION
Filed: May 25, 2004	:	
For: Scrubs Formed From Water-Soluble	:	
Polymeric Materials	:	

This is in response to applicants' petition filed July 28, 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 Richard Bertsch by letter addressed to the Director, Technology Center 3700, or by telephone at (571) 272-3750 or by facsimile transmission at (571) 273-0275.

Richard A. Bertsch

Richard A. Bertsch, Director
Technology Center 3700

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Silverbrook Research Pty Ltd.
393 Darling Street
Balmain, 2041
AUSTRALIA AIR MAIL

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JAN 08 2007

OFFICE OF PETITIONS

In re Application of
Kia Silverbrook
Application No. 10/853,336
Filed: May 26, 2004
Attorney Docket No. BAL91US

DECISION ON PETITION

This is decision on the petition under 37 CFR 1.181, filed November 3, 2006, to withdraw the holding of abandonment.

The above-identified application became abandoned for failure to file a timely response to the nonfinal Office action, mailed March 14, 2006, which set a three-month shortened statutory period for reply. The above-identified application became abandoned on June 15, 2006. On September 26, 2006, the Office mailed a Notice of Abandonment.

In the present petition, petitioners assert that they submitted a timely reply to the nonfinal Office action via Federal Express on June 5, 2006. In support of the assertion, petitioners provided a copy of the reply, the Declaration of Patent Administrator Leonie Frances News, a copy of the FedEx Shipping Label, the FedEx Pickup Confirmation, and a FedEx Track Shipments Detailed Results. In particular, Ms. News admitted that petitioners did not include an itemized postcard with the original reply. Ms. News contended that the reply was sent via Federal Express on June 5, 2006, and was delivered to the USPTO on June 7, 2006, as evidenced by the FedEx Pickup Confirmation.

The Office file is the official record of the papers filed in this application. After reviewing the official file, the Office has not located the reply allegedly mailed on June 5, 2006. A petitioner 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.

Section 711.03(c)(I)(B) of the Manual for Patent Examining Procedure states:

> 37 CFR 1.10(c) through 1.10(e) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an

appropriate petition under 37 CFR 1.10(c), (d), or (e) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

The showing of record is insufficient to warrant withdrawal of the holding of abandonment. In the present case, petitioners chose not to utilize the mailing procedures set forth in MPEP 711.03(c)(I)(B). Specifically, petitioners did not submit a petition under 37 CFR 1.10, a copy of the returned, date-stamped postcard receipt, or a copy of the correspondence with a proper certificate of mailing. Instead, petitioners sent the reply via Federal Express. Thus, petitioners failed to submit sufficient documentary evidence to demonstrate that petitioners timely filed a reply.

In view of the above, the petition to withdraw the holding of abandonment is **dismissed**.

Petitioners may wish to file 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 § 1.17(m), an additional $1,500.00 for a large entity and $750.00 for a small entity;

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and,

(4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to § 1.137(d), unless previously filed.

Further correspondence with respect to this matter should be addressed to the attention of Senior Petitions Attorney Christina Tartera Donnell as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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393 DARLING STREET
BALMAIN NSW 2-041
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JAN 29 2007

OFFICE OF PETITIONS

In re Application of	:	
Kia Silverbrook	:	
Application No. 10/853,336	:	ON PETITION
Filed: 05/26/2004	:	
Attorney Docket No. BAL91US	:	

This is in response to the petition under 37 CFR 1.78(a)(3), filed November 3, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for benefit of priority to the prior-filed applications set forth in the concurrently filed amendment.

The Office notes that a petition under 37 CFR 1.78(a)(3) must be accompanied by the $1,370.00 surcharge set forth in 37 CFR 1.17(t). However, petitioners did not pay the surcharge or submit an authorization to charge a deposit account for the required fee. The rules and statutory provisions governing the operations of the Office require payment of a fee upon filing a petition.

Therefore, the petition under 37 CFR 1.78(a)(3) will not be treated on its merits, but rather will remain in the file until the Office receives a renewed petition under 37 CFR 1.78(a)(3) accompanied by the $1,370.00 surcharge.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell:**

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 272-3211
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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JUN 0 8 2007

OFFICE OF PETITIONS

In re Application of
Kia Silverbrook
Application No. 10/853,336
Filed: 05/26/2004
Attorney Docket No. BAL91US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 1, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 14, 2006, which set a shortened statutory period for reply of three (3) months. Petitioner did not obtain any extensions of time under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on June 15, 2006. On September 26, 2006, the Office mailed a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee; and (3) a proper statement of unintentional delay.

This matter is being referred to Technology Center Art Unit 2853.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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JUN 0 8 2007
OFFICE OF PETITIONS

In re Application of
Kia Silverbrook
Application No. 10/853,336
Filed: 05/26/2004
Attorney Docket No. BAL91US

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 1, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications.

The petition is **dismissed.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

The Office notes:

The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e., continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications. 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.

MPEP 201.11(III)(C)

After reviewing the chain of applications to which petitioner is seeking a claim for priority, it appears prior-filed Application No. 10/713,059 does not have a reference to Application No. 09/425,418. Therefore, petitioner must perfect the priority claim as a condition for acceptance of the present petition under 37 CFR 1.78(a)(3). Petitioner must file a petition under 37 CFR 1.78(a)(3) in Application No. 10/713,059, seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 09/425,418 by way of a certificate of correction.[1]

Petitioner must submit a renewed petition under 37 CFR 1.78(a)(3) in the present application, accompanied by a copy of the completed Certificate of Correction to demonstrate that petitioner perfected the priority claim.

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) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

[1] In the alternative, petitioner must delete the priority claim to Application No. 09/425,418, in the present application.

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SEP 05 2007

OFFICE OF PETITIONS

In re Application of	:	
Kia Silverbrook	:	
Application No. 10/853,336	:	DECISION ON PETITION
Filed: 05/26/2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. BAL91US	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 7, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the

benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. 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 2853 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.

Christina Tartera Donnell

Christina Tartera Donnell
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
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
10/853,336	05/26/2004	2853	770	BAL91US	9	3

CONFIRMATION NO. 6980

CORRECTED FILING RECEIPT

OC000000025673453

24011
SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN, 2041
AUSTRALIA

Date Mailed: 09/05/2007

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)

Kia Silverbrook, Balmain, AUSTRALIA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CIP of 10/791,793 03/04/2004 PAT 6,866,369
which is a CON of 09/966,289 09/28/2001 PAT 6,698,867
which is a CON of 09/425,418 10/19/1999 PAT 6,309,048

Foreign Applications

AUSTRALIA PP6539 10/16/1998

If Required, Foreign Filing License Granted: 09/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US10/853,336

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method and apparatus for firing ink from a plurality of nozzles on a printhead

Preliminary Class

347

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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DEPT. ICC
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA PA 19103

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JUN 04 2009

OFFICE OF PETITIONS

In re Application of	:	
Terry et al.	:	
Application No. 10/853,383	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. I-2-0565.1US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 24, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Reply pursuant to 37 CFR 1.111, (2) the petition fee, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center AU 2617 for further examination on the merits.

Liana Walsh
Petitions Examiner
Office of Petitions

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MENDELSOHN, DRUCKER, & ASSOCIATES, P.C.
1500 JOHN F. KENNEDY BLVD., SUITE 405
PHILADELPHIA, PA 19102

Mail Date: 05/19/2010

Applicant	: Frank Baumgarte	: DECISION ON REQUEST FOR
Patent Number	: 7639823	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/853,394	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1618** 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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TOMMY GLEN NOBLE
P.O. BOX 190
HINDMAN, KY 41822

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MAY 19 2008

OFFICE OF PETITIONS

In re Application of	:	
Tommy Glen Noble	:	
Application No. 10/853,399	:	ON PETITION
Filed: April 11, 2005	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 5, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 5, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 6, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1) and (2).

With respect to item 1:

A petition to revive cannot be granted where there is an outstanding requirement. In the instant case, there was no response to the April 5, 2007 Office action. A courtesy copy of this Office action is being mailed along with this decision. Accordingly, the petition to revive cannot be granted until the response to the Office action is received.

With respect to item 2:

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is $1,540 ($770 if small entity).

The petition in the above-identified application was not accompanied by payment of the required fee. No consideration on the merits can be given that petition until the required fee is received.

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
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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) 272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

Attachment: Copy of April 5, 2007 Non-final Office action.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/853,399	04/11/2005	Tommy Glen Noble		4678

7590 04/05/2007

Tommy Glen Noble
P.O. Box 190
Hindman, KY 41822

EXAMINER
TO, TOAN C

ART UNIT	PAPER NUMBER
3616	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/853,399	NOBLE, TOMMY GLEN	
	Examiner	Art Unit	
	Toan C. To	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 26 May 2004.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 26 May 2004 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Specification

1. A substitute specification including the claim(s) is required pursuant to 37 CFR 1.125(a) because the specification does not contain section headings and the disclosure thereof, for example, the specification does not contain brief description of the drawing, detail description of the invention, and claim(s). Since the specification includes a claim sheet which does not contain any claim but it contains "High Impact Fire Protection System"; therefore, for purpose of examination the application on merit, the examiner assumes that "High Impact Fire Protection System" is subject matter of claim 1.

A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
  (1) Field of the Invention.
  (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Content of Specification

(a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.

(b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.

(c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.

(d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).

(e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

(f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

(1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

(2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

(g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

(h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

(i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

(j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

(k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

(l) Sequence Listing, See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

2. The abstract of the disclosure is objected to because the abstract fails to comply with the above section (k). Correction is required. See MPEP § 608.01(b).

Drawings

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawing fails to comply with 37 CFR. §1.81(a), and §1.84(l) and §1.84(p). Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 1 (as assumed by the examiner) is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 1 (as assumed by the examiner) is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1, as best understood by the examiner, is rejected under 35 U.S.C. 102(b) as being anticipated by Ostlyngen et al (U.S. 5,934,379).

Ostlyngen et al discloses the high impact fire protection system (see abstract).

Exmainer's Note

11. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site http://www.uspto.gov in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan C. To whose telephone number is (571) 272-6677. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Toan To

AU: 3616
March 28, 2007

Notice of References Cited	Application/Control No. 10/853,399	Applicant(s)/Patent Under Reexamination NOBLE, TOMMY GLEN	
	Examiner Toan C. To	Art Unit 3616	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,934,379	08-1999	.O slashed.stlyngen et al.	169/46
*	B	US-6,418,752	07-2002	Kotliar, Igor K.	62/640
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FEB - 7 2006

WALTER A. HACKLER
2372 S.E. BRISTOL, SUITE B
NEWPORT BEACH, C 92660-0755

In re Application of	:	
Orest Olejnik et al	:	
Serial No.: 10/853,401	:	DECISION ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No.: 3206	:	

This letter is in response to the Petition under 37 C.F.R. 1.182, which is being treated as a petition under 37 CFR 1.181, filed November 14, 2005, to reinstate the Notice of Allowability and issue the application as a patent.

BACKGROUND

A review of the file history shows that this application was allowed by the examiner on May 26, 2005, by mailing of a Notice of Allowance and Issue Fee Due and Notice of Allowability accompanied by a brief statement of reasons for allowance and set a three month statutory period for payment of the Issue Fee. Applicants duly paid the Issue Fee within two months on July 22, 2005. On August 18, 2005, the Group Director mailed a letter to applicants indicating that the application was being withdrawn from issue at the behest of the Office and that a new Office action would be mailed to applicants shortly.

The examiner mailed a new Office action to applicants on October 24, 2005, setting a three month shortened statutory period for reply and setting forth a new rejection for obvious double patenting over US 6,074,661 and a rejection under 35 U.S.C. 103(a) of all claims for obviousness over Hunter et al with a brief explanation.

Applicants replied by filing a terminal disclaimer to overcome the obvious double patenting rejection and this petition on November 14, 2005. Applicants have since filed a full reply to the Office action on January 17, 2006. The delay in acting on this petition is regretted.

DISCUSSION

Applicants complain that the action of the Office is arbitrary and capricious and that there is no proper reason for withdrawal of the application from issue. Applicants note that the rejections set forth are based only on prior art already considered, applied, argued and overcome. Applicants are correct with respect to the rejection under 35 U.S.C. 103(a) over Hunter et al. This rejection was previously set forth and withdrawn by the examiner in allowing the

application. The rejection for obvious double patenting was not previously set forth. Further, the examiner's explanation of the rejection over Hunter et al is extremely brief and it is not clear that the reasons set forth are different from those previously set forth. However the obvious double patenting rejection is apparently proper and conceded by applicants as proper by the filing of the Terminal Disclaimer to overcome the rejection. Thus at least one clear reason for withdrawing the application from issue is set forth.

Applicants further argue that by withdrawing the application from issue the Office is engaging in a *sub rosa* reexamination of the application. Applicants' argument is not well taken. Reexamination can only be requested of an issued patent. This application was not an issued patent. Further, even in reexamination the art previously applied and overcome can be applied in a new rejection if it is applied for a different reason or a different teaching contained therein and not previously relied on.

The Office is mandated with the issuance of valid patents. On rare occasions an application having been allowed is found, in view of consideration of other applications or art, to have been allowed improperly by the examiner. In such instances the Office acts expeditiously to withdraw an application from issue so as not to foist on the public an invalid patent or a patent subject to challenge in a reexamination proceeding or court litigation proceeding. While such is obviously distressing to an applicant, it is necessary under appropriate circumstances and within the authority of the Office until such time as a patent actually issues. Preferably it is done prior to payment of the Issue Fee, but not always.

In view of the setting forth of a new rejection for obvious double patenting the action by the Office was proper.

DECISION

The petition is **DENIED** for the reasons set forth above.

The application will be forwarded to the examiner for consideration of the reply filed January 17, 2006, and further action as warranted.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the mailing date thereof in order to be considered timely.

Should there be any questions regarding this decision, please contact Special Program Examiner William R. Dixon, Jr., by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-0519 or by Official Fax at 571-273-8300

Bruce M. Kisliuk
Director, Technology Center 1600

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MAY 2 4 2006

WALTER A. HACKLER
2372 S.E. BRISTOL, SUITE B
NEWPORT BEACH, C 92660-0755

In re Application of	:	
Orest Olejnik et al	:	
Serial No.: 10/853,401	:	DECISION ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No.: 3206	:	

This letter is in response to the Request for Reconsideration of Petition Decision which is being considered as a renewed Petition under 37 C.F.R. 1.181, filed February 17, 2006, to reinstate the Notice of Allowability and issue the application as a patent.

BACKGROUND

A review of the file history again shows that this application was allowed by the examiner on May 26, 2005, by mailing of a Notice of Allowance and Issue Fee Due and Notice of Allowability accompanied by a brief statement of reasons for allowance and set a three month statutory period for payment of the Issue Fee. Applicants duly paid the Issue Fee within two months on July 22, 2005. On August 18, 2005, the Group Director mailed a letter to applicants indicating that the application was being withdrawn from issue at the behest of the Office and that a new Office action would be mailed to applicants shortly.

The examiner mailed a new Office action to applicants on October 24, 2005, setting a three month shortened statutory period for reply and setting forth a new rejection for obvious double patenting over US 6,074,661 and a rejection under 35 U.S.C. 103(a) of all claims for obviousness over Hunter et al with a brief explanation.

Applicants replied by filing a terminal disclaimer to overcome the obvious double patenting rejection and this petition on November 14, 2005. Applicants then filed a full reply to the Office action on January 17, 2006.

Subsequent to the mailing of the previous petition decision applicants filed this renewed petition on February 17, 2006, asking for reconsideration of the previous decision as being based on an incorrect position. Prior to consideration of this renewed petition the examiner mailed a Final Office action to applicants on April 6, 2006, maintaining the rejection under 35 U.S.C. 102(b) over Hunter et al as anticipatory art. Applicants filed a response to the Final Office action on May 2, 2006, which has not yet been considered by the examiner.

DISCUSSION

Applicants complain that the previous petition decision is based on incorrect grounds. Applicants argue that the finding that the obvious double patenting rejection set forth as "apparently proper" and the filing of a terminal disclaimer to overcome it was not an acquiescence to the rejection. Applicants argue that the only reply they could make to the rejection was to file a terminal disclaimer. This is not correct. Applicants can respond to any rejection in any of several ways. Response to an obvious double patenting rejection may be by filing a terminal disclaimer, cancellation of the rejected claims or by argument that the rejection is incorrect. The filing of a terminal disclaimer in this or any other application is generally taken as an acknowledgement that the rejection is justified and is being overcome by linking the two applications together. Thus, in the absence of any other indicators, the decision properly stated that applicants conceded the rejection as "apparently proper" by their response thereto.

Applicants also argue that the decision "glides over Applicants' assertion by stating the 're reexamination can be only requested of an issued patent'". Applicants argue that a "sub-rosa" reexamination has occurred in this application for which no rules exist. Applicants' arguments are not well taken. On filing of an application an applicant is entitled to an examination thereof. Should the application be rejected applicants may file amendments and arguments requesting a "reexamination" thereof. Examination is generally concluded by issuance of a Notice of Allowance (or Abandonment). However, this does not preclude the Office from reopening examination when new information is brought to the attention of the Office and the information casts a cloud on whether the application was properly allowed. In such instances it is Office policy to withdraw the application from issue and conduct a further "(re)examination" of the application. Such withdrawal may be initiated up to the date of actual issuance of the patent.

Formal "reexamination" of a patent occurs only when requested by a patent owner or third party, or in rare instances, by the Director of the Patent and Trademark Office. The guidelines for reexamination are found in M.P.E.P. 2200. The guidelines therein state that reexamination shall be based on prior art not previously considered or, if previously considered, based on a new consideration or interpretation thereof.

As noted in the previous decision, the Office is tasked with the issuance of valid patents. On rare occasions an application having been allowed is found, in view of consideration of other applications or art, to have been allowed improperly. In such instances the Office acts expeditiously to withdraw an application from issue. While such is obviously distressing to an applicant, it is necessary under appropriate circumstances and within the authority of the Office until such time as a patent actually issues. Preferably it is done prior to payment of the Issue Fee, but not always.

Applicants' request for reconsideration of the previous petition decision has been made, but is not persuasive of error therein.

DECISION

The renewed petition is **DENIED** for the reasons set forth above and in the previous decision.

The application will be forwarded to the examiner for consideration of the reply filed January 17, 2006, and further action as warranted.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the mailing date thereof in order to be considered timely.

Should there be any questions regarding this decision, please contact Special Program Examiner William R. Dixon, Jr., by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-0519 or by Official Fax at 571-273-8300

Bruce M. Kisliuk
Director, Technology Center 1600

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MacMillan, Sobanski, & Todd, LLC
One Maritime Plaza, Fourth Floor
720 Water Street
Toledo OH 43604

COPY MAILED

NOV 0 2 2004

OFFICE OF PETITIONS

In re Application of
Peng, et al.
Application No. 10/853,409
Filed: May 24, 2004
Attorney Docket No. 81090445
FOR: FUEL INJECTION FOR A FREE PISTON ENGINE

: DECISION GRANTING
: PETITION

This is a decision on the petition under 37 CFR 1.10(c), filed August 3, 2004 (certificate of mailing date August 2, 2004), requesting that the above-identified application be accorded a filing date of May 25, 2004, instead of the presently accorded date of May 24, 2004.

Petitioners allege that the application was deposited in "Express Mail" service with the U. S. Postal Service (USPS), on May 25, 2004. In support, petitioner provided a copy of the Application Transmittal Letter submitted with the original filing that lists Express Mail label no. EL764733215US thereon. While petitioners have not provided a copy of the Express Mail label in question, petitioners have provided a printout of the USPS Shipping Center Track and Confirm information for the package associated with EL764733215US. The USPS printout states that the package was accepted by the USPS on May 25, 2004. Petitioners request that the application be accorded a filing date of May 25, 2004.

In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on May 25, 2004.

The petition is granted. As this is a feeless petition, no petition fee has been or will be charged.

The application will be returned to the Office of Initial Patent Examination for further processing with a filing date of **May 25, 2004.**

Telephone inquiries concerning this matter should be directed to the undersigned at (703)308-6712.

E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

In re Application of: Sato
Application No. 10/853,411
Filed: May 26, 2004
For: STORAGE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 24 March 2005 and supplemented by the submission of 10 June 2005, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **DISMISSED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

In those instances where the request for this special status does not meet all the prerequisites set forth above, **applicant will be notified and the defects in the request will be stated**. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Technology Center (TC) Special Program Examiner.

The petition filed 24 March 2005 and supplemented on 10 June 2005 fails to adequately meet requirement (e) of the criteria set forth above. The discussion of the references does not point out with the particularity required by 37 CFR 1.111(b) and (c) how the claimed subject matter is patentable over the references.

The petition identifies a feature of each independent claim (i.e., a first feature of independent claim 1, a second feature of independent claim 7). However, in identifying this feature, the discussion states that the references "fail to disclose or suggest [the identified feature] *in combination* with the other limitations recited in the claims" (emphasis added). It is also stated in the discussion of each reference that the reference "does not disclose or suggest" the identified feature for each independent claim "*in combination* with the other limitations recited in each of the independent claims" (emphasis added). In effect, this statement indicates that the *entirety* of the two independent claims is not disclosed by the thirteen references purported to be most closely related. Such a statement is not a sufficient detailed description. Applicants may wish to consider deleting the portions of the discussion that indicate that the identified features *in combination* with the other limitations are not disclosed by the references. Also, it is suggested that if the identical statement is being made to distinguish each reference from the claims, as in the supplemental petition, then the statement should simply be made once in the petition. (E.g., "None of the references disclose . . . .")

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

ds

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United States Patent and Trademark Office
P.O. Box 1450
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MAIL

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

In re Application of: Sato
Application No. 10/853,411
Filed: 26 May 2004
For: STORAGE SYSTEM

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the petition filed 24 March 2005 and the supplement submitted 10June2005, under 37 C.F.R. 102(d) and M.P.E.P. § 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Petition to Make Special **GRANTED** since all of the requirements for special status under MPEP § 708.02(VIII) have been met.

The application 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
571-272-3595

GO

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MARK A. KRULL
P.O. BOX 7198
BEND OR 97708

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NOV 16 2006

OFFICE OF PETITIONS

In re Application of	:	
Kenneth W. Stearns	:	
Application No. 10/853,442	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. ABT-PQ	:	

This is a decision on the petition, filed May 25, 2006, which is being treated as a petition under 37 CFR 1.181(a) to Withdraw Holding of Abandonment.

The petition under 37 CFR 1.181(a) is **GRANTED**.

The application was held abandoned for failure to timely reply to the Nonfinal Office action mailed August 17, 2005.

The petition states that a reply was timely submitted by facsimile transmission on February 16, 2006. To support this assertion, the petitioner has submitted a copy of the response, along with confirmation of successful transmission on February 16, 2006.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being forwarded to Technology Center AU 3764.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

HAYNES AND BOONE, LLP
901 MAIN STREET, SUITE 3100
DALLAS, TX 75202

In re Application of :
Shih, et al. : LETTER
Application No. 10/853,459 :
Filed: May 25, 2004 :
Attorney Docket No. **2001-0045CIP/24061.577** :

Reference is made to the petition under 37 CFR 1.47(a) filed March 1, 2005, in the above-cited application.

Petitioner is advised that no decision can be rendered on the petition under 37 CFR 1.47(a) because the application is **abandoned.**

The record reflects that a Notice to File Missing Parts of Non-provisional Application was filed on July 26, 2004, requiring an executed oath or declaration and payment of a surcharge for the late filing of the same. The notice allowed a period for reply of two-months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). The record further reflects that a petition under 37 CFR 1.47(a) was filed on March 1, 2005, along with a request for an extension of time within the fifth month. The petition included an unsigned and undated certificate of mailing.

It is noted that 37 CFR 1.8 provides, in pertinent part, that:

> (a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the US Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
>
> (1) Correspondence will be considered timely filed if:
>
> (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
>
> (A) Addressed as set out in 1.1(a) and deposited with the US Postal Service with sufficient postage as first class mail; or
>
> (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with 1.6(d); and
>
> (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on, or before, the date indicated.

The certificate of mailing found with the petition under 37 CFR 1.47(a) petition is not effective because it is not signed or dated as required by 37 CFR 1.8(a)(1)(ii). The petition is, therefore, accorded a filing date of March 1, 2005, which is after the expiration of the maximum extendable period set for reply, i.e., midnight on February 26, 2005. The application is, therefore, abandoned as of February 26, 2005, for failure to file a timely response to the Notice to File Missing Parts of Nonprovisional Application.

The application must be revived pursuant to 37 CFR 1.137 before the petition under 37 CFR 1.47(a) will be considered.

Further correspondence regarding this matter may be addressed to the following:

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

Questions regarding this communication may be directed to the undersigned at (571)272-3222.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
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HAYNES AND BOONE, LLP
901 MAIN STREET, SUITE 3100
DALLAS, TX 75202

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OFFICE OF PETITIONS

In re Application of

Shih, Ting, Lee, Lin, and Wong

Application No. 10/853,459

Filed: March 1, 2005

Attorney Docket No. 2001-0045CIP/24061.577

DECISION ON PETITION

Title of Invention: METHOD FOR MAKING METAL CAPACITORS WITH LOW LEAKAGE CURRENTS FOR MIXED-SIGNAL DEVICES

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed April 12, 2005. This is also a decision on the petition under 37 CFR 1.47(a), filed March 1, 2005.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

The petition under 37 CFR 1.47(a) is **granted**.

TREATMENT UNDER 37 CFR 1.181(a)

This application was held abandoned on February 27, 2005, after it was believed that a timely response was not received to the Notice to File Missing Parts of Nonprovisional Application mailed July 26, 2004. The notice allowed a period for shortened period for reply of two (2) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A response was filed on March 1, 2005, along with a request for an extension of time within the fifth month. The response was deemed untimely because it was believed that a certificate of mailing under 37 CFR 1.8 did not accompany the response.

A review of the petition papers revealed a certificate of mailing dated February 25, 2005, on the transmittal letter that accompanied the response to the Notice to File Missing Parts of Nonprovisional Application. A second review of the application file revealed that that the certificate of mailing was present on the transmittal letter that was filed on March 1, 2005. The holding of abandonment was improperly imposed and is withdrawn, accordingly.

TREATMENT UNDER 37 CFR 1.47(a)

The petition is **GRANTED**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

The above-cited application was filed on May 25, 2004, without a properly executed declaration under 37 CFR 1.63. On July 26, 2004, a Notice to File Missing Parts of Nonprovisonal Application was mailed requiring a properly executed oath or declaration and a surcharge. The notice set an extendable period for reply of two months from its mailing date. The instant petition was the filed on March 1, 2005, along with a request for extension of time within the fifth month.

Petitioner has shown that inventors Shih and Wong have constructively refused to join the prosecution of the above-identified application. The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

PAUL J. SUTTON, ESQ., BARRY G. MAGIDOFF, ESQ.
GREENBERG TRAURIG, LLP
200 PARK AVENUE
NEW YORK NY 10166

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JUL 1 1 2006
OFFICE OF PETITIONS

In re Application of Anthony Tufano et al. Application No. 10/853,465 Filed: May 25, 2004 Attorney Docket No.: 0267-001-2005CIP3 Title: WALL PLATE WITH ONE OPENING FOR ONE OR MORE WIRING DEVICES	DECISION ON PETITION UNDER 37 C.F.R. §1.181

This is a decision on the petition filed April 5, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application became abandoned for failure to reply in a timely manner to a notice of non-compliant amendment, mailed October 4, 2005, which set a period for reply of one month (the notice was mailed in response to drawings which were submitted on September 23, 2005, which were filed in response to a non-final Office action, mailed May 19, 2005). 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 5, 2005. A notice of abandonment was mailed on February 8, 2006.

With the present petition, Petitioner has asserted that a response to this communication was timely filed on February 6, 2006[1]. It is noted that February 4, 2006 fell on a Saturday. Petitioner has submitted a copy of this response, and it contains a certificate of mailing dated February 6, 2006, along with a petition for a three-month extension of time.

1 Petition, page 2.

The electronic file has been reviewed, and the same contains the above-mentioned response. Furthermore, the fee associated with the filing of a three-month extension of time was charged to Petitioner's Deposit Account on February 9, 2006. Hence, it is clear that this response was timely received on February 9, 2006.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn. It is clear that a response was timely submitted. Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that a submission was timely submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment which was received with the present petition can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 04/20/2010

Applicant	: Andrew H. Cragg	: DECISION ON REQUEST FOR
Patent Number	: 7569056	: RECALCULATION of PATENT
Issue Date	: 08/04/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/853,476	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: 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.

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ROPES & GRAY LLP
PATENT DOCKETING 39/41
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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SEP 15 2009

OFFICE OF PETITIONS

In re Patent No. 7,009,624	:	
Issue Date: March 7, 2006	:	
Application No. 10/853,482	:	ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. PGLD-P02-002	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

EUGENE LIEBERSTEIN
2151 LONG RIDGE ROAD
STAMFORD CT 06903

In re Application of	:	
Elaine A. Blechman	:	
Application No. 10/853,488	:	DECISION ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. PROAPP504	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 18, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a previously filed amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal rejection mailed April 16, 2008, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3621 for appropriate action by the Examiner in the normal course of business on the reply received August 11, 2008.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Majid ANWAR	:	
Application No. 10/853,495	:	NOTICE
Filed: May 24, 2004	:	
Attorney Docket No. PGLD-P02-001	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed February 3, 2009. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page

Thurman K. Page
Petitions Examiner
Office of Petitions

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32ND FLOOR
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Machlab El-Hajj, et al.	:	
Application No. 10/853,513	:	ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 03-078-A1	:	
For: WIRELESS COMMUNICATION FRAMEWORK	:	

This is a decision on the petition under 37 CFR 1.53(e), filed December 27, 2004, requesting, in effect, withdrawal of the July 26, 2004 Notice of Incomplete Nonprovisional Application, insofar as it alleges that the application was deposited without drawings. In addition, this decision will address the petition under 37 CFR 1.47(a), filed December 27, 2004.

The petition under 37 CFR 1.53(e) is **GRANTED**.

The petition under 37 CFR 1.47(a) 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 application was deposited on May 24, 2004. On July 26, 2004, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the application papers deposited on May 24, 2004 because no drawings were present, as is required by 35 USC 113. It is noted that the specification describes and references numerous drawing figures.

Petitioners request that the above-identified application be accorded a filing date of May 24, 2004 on the basis that 17 sheets of drawing figures were received in the Patent and Trademark Office (PTO) on May 24, 2004. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing May 24, 2004 as the date of receipt. The postcard lists, *inter alia*, that the filing includes 17 sheets of drawings.

The return postcard constitutes *prima facie* evidence that 17 sheets of drawings were filed on May 24, 2004. MPEP 503. Accordingly, the petition under 37 CFR 1.53(e) is granted.

Pursuant to petitioners' authorization, deposit account no. 13-2490 will be credited the $400 petition fee submitted on December 27, 2004.

Regarding the petition under 37 CFR 1.47(a), the above-identified application was filed on May 24, 2004 without an executed oath or declaration. Accordingly, on July 26, 2004, a "Notice of Incomplete Nonprovisional Application" was mailed, requiring *inter alia* an executed oath or declaration.

In response, on December 27, 2004, a request for a three month extension of time and required fee, a declaration executed by 4 of 6 joint inventors, the surcharge, the petition fee, and the instant petition were filed. The petition signed by Attorney Julian F. Santos, states that non-signing joint inventors Machlab El-Hajj and Smith received a copy of the application, a declaration, and an assignment for the above-identified application, but both inventors did not respond to the request that he sign the declaration for the patent application.

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 $200 as specified in 37 CFR § 1.17(g), and
(4) the last known address of the omitted inventor(s).

This petition lacks item (2) above and is therefore dismissed.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented.

The declaration contains noninitialed, nondated alteration to the fourth named inventor's information – his name, residence, and post office address. 37 CFR 1.52(c) states that "[a]ny interlineation, erasure, cancellation or other alteration of the application papers filed should be made on or before the signing of the accompanying oath or declaration pursuant to 1.63...." This includes the oath or declaration. The Office will not consider whether noninitialed and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP 605.04(a).

Fortunately, the deficiencies or inaccuracies relate to a signing inventor. Thus, pursuant to 37 CFR 1.67(a)(2), Mr. Kelsey should correct his information in a supplemental declaration identifying the entire inventive entity and their information, but signed only by him.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (703) 872-9306 – ATTN: Office of Petitions

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **May 24, 2004**, using the copy of the 17 sheets of drawings submitted with the instant petition. Office records will be corrected to show that 17 sheet of drawings were present on filing. However, the application will not be examined until Rule 47 status is granted.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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CHICAGO IL 60606

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In re Application of
Machlab El-Hajj, et al.
Application No. 10/853,513
Filed: May 24, 2004
Attorney Docket No. 03-078-A1
For: WIRELESS COMMUNICATION FRAMEWORK

: ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.47(a), filed April 15, 2005.

The petition under 37 CFR 1.47(a) is **GRANTED**.

Petitioners have shown that the non-signing inventors, Machlab El-Hajj and Smith, have constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the December 27, 2004 petition, signed by Attorney Julian F. Santos, states that non-signing joint inventors received a copy of the application, a declaration, and an assignment for the above-identified application, but both inventors did not respond to the request that he sign the declaration for the patent application. Petitioners have submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

E Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ANDREW SMITH
117 CRANDALL COURT, NE
CEDAR RAPIDS, IA 52402

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MAY 3 1 2005

OFFICE OF PETITIONS

In re Application of
Machlab El-Hajj, et al.
Application No. 10/853,513
Filed: May 24, 2004
Attorney Docket No. 03-078-A1
For: WIRELESS COMMUNICATION FRAMEWORK

LETTER

Dear Mr. Smith:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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HASSANAYN MACHLAB EL-HAJJ
2680 GLEN HOLOW COURT
CORALVILLE, IA 52241

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MAY 3 1 2005

OFFICE OF PETITIONS

In re Application of
Machlab El-Hajj, et al.
Application No. 10/853,513
Filed: May 24, 2004
Attorney Docket No. 03-078-A1
For: WIRELESS COMMUNICATION FRAMEWORK

LETTER

Dear Mr. El-Hajj:

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 (571) 272-3230.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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Alexandria, VA 22313-1450
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A PATENT LAWYER CORP, PC
R WILLIAM GRAHAM
22 S ST CLAIR ST
DAYTON OH 45402

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OFFICE OF PETITIONS

In re Application of :
Wenzler :
Application No. 10/853,515 : ON PETITION
Filed: May 25, 2004 :
Attorney Docket No. W-00019-001CIP :
For: HANGING DEVICE

This is a decision on the petition under 37 CFR 1.181, filed December 27, 2005, requesting withdrawal of the holding of abandonment in 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 May 17, 2005, which set forth an extendable three (3) month period for reply. The Office contended that this application became abandoned on August 18, 2005 for failure to reply. A Notice of Abandonment was mailed on December 21, 2005.

Petitioners assert an amendment was timely transmitted via facsimile to and received by the Office on August 9, 2005. The Office has no record of receiving this reply.

Under 37 CFR 1.8(b), correspondence is considered timely filed if petitioner (1) informs the Office of the previously mailed/transmitted correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence(2) submits a copy of the previously transmitted/mailed correspondence with a signed certificate of mailing/transmission affixed thereto; (3) submits a statement which attests on a personal knowledge basis to the previous timely mailing/transmission. A copy of the sending unit's report confirming transmission may be used to support this statement

Furthermore, under 37 CFR 1.8(c), the Office may require additional evidence to determine if the correspondence was timely filed.

A review of the sending unit's confirmation transmission for the correspondence transmitted on August 9, 2005 reveals that it was transmitted to 571 273-6500. Effective December 1, 2003, all facsimile correspondence to the Office must be sent to the centralized number, which is 571 273-

8300. Replies to Office actions must be directed to the centralized number. MPEP 502.01 Responses to Office actions sent to Technology Centers are considered proposed/draft amendments.

Nevertheless, petitioner did utilize an Office facsimile number and the transmission appears to have been successful. Petitioners are on notice that utilizing a facsimile number other than the centralized facsimile number will not be viewed as generously in the future.

The petition under 37 CFR 1.181 is granted and the holding of abandonment is withdrawn.

After the mailing of this decision, the application file will be forwarded to Technology Center AU 3634 for consideration of the amendment filed August 9, 2005 and resubmitted with the instant petition on December 27, 2005.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON, MA 02205

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JUL 25 2007

OFFICE OF PETITIONS

In re Application of
SUGERMAN, Gerald
Application No. 10/853,516
Filed: May 24, 2004
Attorney Docket No. **61040(50531)**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 13, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action of March 1, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 2, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $395, and the submission required by 37 CFR 1.114; (2) the petition fee of $750; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

The application file is being referred to Technology Center Art Unit 1713 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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P.O. BOX 1450
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INTEL/BLAKELY
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

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JUN 11 2008

OFFICE OF PETITIONS

In re Application of :
Roy Armoni, et al. :
Application No. 10/853,526 :
Filed: May 25, 2004 :
Attorney Docket No. 042390.P17362 :

ON PETITION

This is a decision in response to the petition, filed February 1, 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 non-final Office action mailed March 14, 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 June 15, 2007. A Notice of Abandonment was mailed on November 20, 2007. On February 1, 2008, 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 $1,540; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 2825 for appropriate action by the Examiner in the normal course of business on the amendment filed February 1, 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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DYKEMA GOSSETT PLLC
1300 I STREET NW, THIRD FLOOR WEST
WASHINGTON, DC 20005

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OFFICE OF PETITIONS

In re Application of
Kaj SALO
Application No. 10/853,528
Filed: May 26, 2004
Attorney Docket No. **66411-083**

DECISION ON PETITION
UNDER 37 CFR 1.181

This is a decision on the petition, filed September 21, 2009, 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 will be considered under 37 CFR 1.137(b).

This application was held abandoned for failure to timely pay the issue and publication fees on or before August 14, 2009, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed May 14, 2009.

Petitioner asserts that on July 6, 2009, a PTOL-85B Issue Fee(s) Transmittal was submitted via facsimile authorizing payment of the issue and publication fees be charged to the deposit account. Unfortunately, the box was checked but the deposit account number was inadvertently omitted.

In view of the above, the petition is hereby **GRANTED**.

The issue fee of $1510 and publication fee of $300 has been charged to Deposit Account No. 04-2223.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to the Office of Data Management for processing into a patent.

Thurman K. Page
Petitions Examiner
Office of Petitions

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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JUN 26 2007

OFFICE OF PETITIONS

In re Application of
Cullen E. Bash, et al.
Application No. 10/853,529
Filed: May 26, 2004
Attorney Docket No. 200314965-1

ON PETITION

This is a decision in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed February 21, 2007, which is being treated as a petition under 37 CFR 1.137(b) to revive the above-identified application.

A review of the record discloses that the application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed July 26, 2005. A Notice of Abandonment was mailed on July 26, 2006. In response, on February 21, 2007, the present petition was filed. Petitioner argues that a response was timely filed; however, the amendment cited an incorrect application number. Petitioner provides a copy of the previously filed amendment and requests that the abandonment be withdrawn.

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is **DISMISSED**.

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 it was timely filed, the holding of abandonment will be withdrawn. In reviewing the papers submitted, it is concluded that the information contained thereon was insufficient to associate the papers with the correct application, since most the identifying data, i.e., inventors, filing date, title, etc., was the same in both applications. Accordingly, the abandonment cannot be withdrawn.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

Accordingly, the petition to revive the application under 37 CFR 1.137(b) 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. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application is being referred to Technology Center AU 2125 for appropriate action by the Examiner in the normal course of business on the reply received February 21, 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

cc: MANNAVA & KANG
8221 OLD COURTHOURSE RD
SUITE 104
VIENNA, VA 22182

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

JUN 29 2009

OFFICE OF PETITIONS

In re Patent No. 7,384,713	:	DECISION ON PETITIONS
Masamitsu	:	under 37 CFR 1.183
Issue Date: June 10, 2008	:	and
Application No. 10/853,532	:	ON REQUEST FOR
Filed: May 26, 2004	:	RECONSIDERATION
Attorney Docket No. 04329.3320	:	OF PATENT TERM ADJUSTMENT

This is a decision on the 1) Petition under 37 C.F.R. 1.183, requesting that the Office suspend the rules and consider on the merits 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), each of which was filed on December 8, 2008.

The petition under 37 CFR 1.183 is **dismissed**.

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

Any request for reconsideration, whether directed to the decision on petition under 37 CFR 1.183 or to the decision on application for patent term adjustment under 37 CFR 1.705(d), must be filed within two months of the mailing date of this decision. Extensions of time under 37 CFR 1.136 are not permitted. See § 1.181(f).

BACKGROUND

On June 10, 2008, the above-identified application matured into U.S. Patent No. 7,384,713, with a revised patent term adjustment of 584 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, as this patent issued prior to the issuance of the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008).[1]

ON PETITION UNDER 37 CFR 1.183
TO WAIVE THE TWO-MONTH REQUIREMENT OF 37 CFR 1.705(d)

The above-referenced patent issued on June 10, 2008. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until December 8, 2008. Petitioner requests that the Office suspend the rules and consider on the merits the Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) even though it was untimely filed more than two months from the date the patent issued.

The relevant regulation, 37 CFR 1.705(d), provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, *any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued* and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*emphasis* added).

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by June 22, 2008, the date two months from the date this patent issued, June 10, 2008. Rather, on December 8, 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

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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.

revised patent term adjustment indicated in the patent. As 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 that the decision of *Wyeth v. Dudas*, No. 07-1492 (D.D.C. Sept. 30, 2008) occurred subsequent to the issuance of this patent.[2]

First, 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)[3], 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. It appears that Petitioner has implied that a Request for Reconsideration of Patent Term Adjustment could not have been filed within two months of the date the above-referenced patent issued, because the basis for the Request for Reconsideration of Patent Term Adjustment is the Wyeth decision, which was not issued until more than two months after the issuance of this patent. This argument is not compelling. Petitioner could have filed a Request for Reconsideration of Patent Term Adjustment as Wyeth did. It is acknowledged that petitioner may have chose 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

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[2] Petition, page 1.

[3] 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.

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.

Second, Petitioner, if not on notice by established principles of administrative law, was on notice by the Office's issuance of the above-cited Opinion that failure to file a request for reconsideration of patent term adjustment within the two-month period as required would likely foreclose their right to judicial relief. Yet they chose to not to file a request for reconsideration within the two-month period. This consequence of their failure does not render the failure an extraordinary situation warranting waiver of the two-month requirement. The key consideration in determining whether waiver is warranted is whether the circumstance that led to petitioner failing to meet the two-month requirement was an extraordinary situation where justice requires waiver.

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.

Third, 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.

It is noted that this petition was filed more than two months after the Wyeth decision and almost six months after the issuance of the patent. Given that the law only allows 180-days for both the filing of a petition and for the Office's

consideration of that petition, petitioner's unexplained more than two-month delay in filing the petition weighs against them.

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 "DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT," filed December 8, 2008. Therein, patentee requests correction of the patent term adjustment (PTA) indicated in the patent to nine hundred and sixty-five (965) days.

On June 10, 2008, the above-identified application matured into U.S. Patent No. 7,384,713 with a revised patent term adjustment of 584 days. The instant request for reconsideration was filed almost six months after the issuance of the patent, on December 8, 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 Paul Shanoski, Senior Attorney, at (571) 272-3225.

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20091117

DATE : November 17, 2009

TO SPE OF : ART UNIT 1656

SUBJECT : Request for Certificate of Correction on Patent No.: 7585656

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:

/ANDREW WANG/
Supervisory Patent Examiner.Art Unit 1656

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NOV 23 2005

OFFICE OF PETITIONS

In re Application of	:	
Francis Tingyu Ngai et al	:	
Application No. 10/853,550	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
Attorney Docket No. ACE001	:	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 27, 2004.

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. Further, if 37 CFR 10.40(b) is not applicable, a practitioner may not request permission to withdraw unless certain condition exits as enumerated in subsection (1) – (6) of 37 CFR 10.40(c).

The request to withdraw as attorney is not accepted in the above-identified application because it is not clear whether James Chi signing on behalf of Douglas E. Mackenzie and the reason for withdrawal was not indicated.

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 Wan Laymon at 571-272-3220.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

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NOV 16 2004

OFFICE OF PETITIONS

In re Application of :
Ryzhikov, Vladimirsky, and Sakin :
Application No.: 10/853,558 : DECISION ACCORDING
Filed: May 26, 2004 : RULE 47(a) STATUS
Attorney Docket No: 1857.2460000 :
For: **System and Method Utilizing a Lithography Tool Having Modular Illumination, Pattern Generator and Projection Optics**

This is in response to the petition under 37 CFR 1.47(a), filed October 21, 2004.

The petition is **GRANTED**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

The above-cited application was filed on May 26, 2004, without an oath or declaration and without the application filing fee. A Notice to File Missing Parts of Nonprovisional Application was mailed on July 22, 2004, requiring an executed oath or declaration, surcharge, and filing fee. The notice allowed an extendable period for reply of two months from its mailing date. The instant petition was filed responsively on October 21, 2004, with a request for an extension of time within the first month. In the instant petition, petitioner maintains that inventor Sakin has constructively refused to execute the declaration and join the prosecution of the above-cited application.

Petitioner has shown that inventor Sakin has constructively refused to join the prosecution of the above-identified application after having been presented with the application papers. The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This application will be directed to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

KOLISCH HARTWELL, P.C.
520 S.W. YAMHILL STREET
SUITE 200
PORTLAND OR 97204

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APR 15 2005

OFFICE OF PETITIONS

In re Application of
Bryan Cheng and Kevin Harmon
Application No. 10/853,561
Filed: May 24, 2004
Attorney Docket No. MAT 3L3
Title: DOLL WITH ANGLED AND JOINTED TORSO

DECISION ON PETITION

This is in response to the petition under 37 C.F.R. §1.47(a)[1], filed January 24, 2005.

On May 24, 2004, the application was filed, identifying Bryan Cheng and Kevin Harmon as joint inventors. The application was deposited without an oath or declaration. On July 23, 2004, a "Notice to File Missing Parts of Nonprovisional Application – Filing Date Granted" (Notice) was mailed, indicating that a fully executed oath or declaration, a surcharge, the basic filing fee, and additional claim fees were required. This Notice set a two-month period for reply.

[1]A grantable petition under 37 C.F.R. §1.47(a) requires:

(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
(3) a statement of the last known address of the non-signing inventors;
(4) either
  a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
  b) proof that the non-signing inventor cannot be found or reached after diligent effort;
(5) a declaration which complies with 37 CFR §1.63.

Along with the instant petition, Petitioner has submitted the petition fee, the surcharge, the basic filing fee, fees for excess claims, a four-month extension of time[2] to make timely this response, a statement of facts, and copies of a letter and several e-mails.

The petition has met requirements (1) – (3) and (5) above.

Regarding the fourth requirement above, it does not appear that a complete copy of the application was sent to the non-signing inventor. Only the declaration and the assignment documents were included with each of the e-mails and the letter which were sent to the non-signing inventor. No mention is made of the inclusion of the specification, claims, or drawings. As such, it is clear that they were not included.

Where a refusal of the inventor to sign the application papers is alleged, the Office requires the petitioner to establish that a bona fide attempt was made to mail a complete copy of the application, which entails the specification, claims, drawings, and oath or declaration.[3] As only the declaration and the assignment was sent, the fourth requirement has not been met. It follows that since it has not been shown by one having firsthand knowledge that a complete copy of the application was sent to the inventor, one cannot refuse to sign something which one has not seen. A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed[4].

Petitioner may wish to consider sending a complete copy of the application to the non-signing inventor at his last known address.

For this reason, the petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include either a declaration which has been executed by Mr. Cheng or proof that a complete copy of the application was provided to him, along with a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.47(a)". 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.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information

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2 The petition contains a certificate of mailing dated January 21, 2005.
3 See MPEP 409.03(d).
4 In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail[5], hand-delivery[6], or facsimile[7].

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

5 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

6 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

7 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

UNITED STATES PATENT AND TRADEMARK OFFICE

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HELLER EHRMAN WHITE & MCAULIFFE LLP
1717 RHODE ISLAND AVE, NW
WASHINGTON, DC 20036-3001

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OFFICE OF PETITIONS

In re Application of	:	
Philip C. Cory	:	
Application No. 10/853,590	:	DECISION ON PETITION
Filed: May 25, 2004	:	TO WITHDRAW
Attorney Docket No. 41563-0011	:	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 18, 2006.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Heller, Ehrman, White & McAuliffe, LLP has been revoked by the assignee of the patent application on September 15, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the 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: NERVONIX, INC
910 TECHNOLOGY BOULEVARD
SUITE A
BOZEMAN, MT 59718

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

Loren G. Helmreich
Browning Bushman, P.C.
Suite 1800
5718 Westheimer
Houston TX 77057

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JUN 19 2006
OFFICE OF PETITIONS

In re Application of Simon J. Ward Application No. 10/853,592 Filed: May 25, 2004 Attorney Docket Number: R&M-254 Title: WELLBORE EVALUATION SYSTEM AND METHOD	DECISION ON PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application, filed on April 10, 2006.

The above-identified application became abandoned for failure to submit the issue fee, publication fee, and corrected drawings in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed November 1, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue fees, publication fees, or corrected drawings[2]. Accordingly, the above-identified application became abandoned on February 2, 2006. A notice of abandonment was mailed on March 28, 2006.

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1 A grantable petition pursuant to 37 C.F.R. 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 See MPEP §710.02(e).

With the present petition, Petitioner has submitted the petition fee, the publication fee, the issue fee, corrected drawings, and the proper statement of unintentional delay.

As such, the petition is **GRANTED**.

After the mailing of this decision, the Office of Patent Publications will be notified of the same so that the present application can be processed into a patent.

The phone number for the Office of Patent Publication is (571) 272-4200. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

Encl. Notice of Draftsperson's Patent Drawing Review

Form PTO-948 (Rev. 06/03)
Application No. 10/853592

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 08/15/2005 & 04/10/2006 are:

A. ✓ approved by the Draftsperson under 37 CFR 1.84 or 1.152.

B. _____ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. Corrected drawings are required.

1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink or Color (3 sets required).

___ Color drawings are not acceptable until petition is granted. Fig(s)_____

___ Pencil and non black ink not permitted. Fig(s)____

2. PHOTOGRAPHS. 37 CFR 1.84(b)

___ One (1) full-tone set is required. Fig(s)_____

___ Photographs may not be mounted. 37 CFR 1.84(e)

___ Photographs must meet paper size requirements of 37 CFR 1.84(f). Fig(s)_____

___ Poor quality (half-tone). Fig(s)_____

3. TYPE OF PAPER. 37 CFR 1.84(e)

___ Paper not flexible, strong, white, and durable. Fig(s)_____

___ Erasures, alterations, overwritings. interlineations, folds, copy machine marks not accepted. Fig(s)_____

4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:
21.0 cm by 29.7 cm (DIN size A4) or
21.6 cm by 27.9 cm (8 1/2x 11 inches)

___ All drawing sheets not the same size. Sheet(s)_____

___ Drawings sheets not an acceptable size. Fig(s)____

5. MARGINS. 37 CFR 1.84(g): Acceptable margins:
Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm

___ Margins not acceptable. Fig(s)_____

_____Top (T) _____ Left (L)

_____Right (R) _____ Bottom (B)

6. VIEWS. 37 CFR 1.84(h)

REMINDER: Specification may require revision to correspond to drawing changes, e.g., if Fig. 1 is changed to Fig. 1A, Fig 1B and Fig. 1C, etc., the specification, at the Brief Description of the Drawings, must likewise be changed.

___Views not labeled separately or properly. Fig(s)_____

7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3)

____ Sectional designation should be noted with Arabic or Roman numbers. Fig(s)_____

8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)

___ Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s)_____

9. SCALE. 37 CFR 1.84(k)

___ Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction. Fig(s)_____

10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(l)

___ Lines, numbers & letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s)_____

11. SHADING. 37 CFR 1.84(m)

___ Solid black areas pale. Fig(s) _____

___ Solid black shading not permitted. Fig(s)_____

12. NUMBERS, LETTERS, & REFERENCE CHARACTERS. 37 CFR 1.84(p)

___ Numbers and reference characters not plain and legible. Fig(s)_____

___ Figure legends are poor. Fig(s)_____

___ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s)_____

___ English alphabet not used. 37 CFR 1.84(p)(2) Fig(s)_____

___ Numbers, letters and reference characters must be at least 32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3). Fig(s)_____

13. LEAD LINES. 37 CFR 1.84(q)

___ Lead lines missing. Fig(s)_____

14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(t)

___ Sheets not numbered consecutively, and in Arabic numbers beginning with number 1. Sheet(s)_____

15. NUMBERING OF VIEWS. 37 CFR 1.84(u)

___ Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s)_____

16. DESIGN DRAWINGS. 37 CFR 1.152

___ Surface shading shown not appropriate. Fig(s)_____

___ Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Fig(s)_____

COMMENTS:

Reviewer SON LAM

Date 06/14/2006

If you have questions, call (703) ~~305-8404~~ 305-0333 (EXT. 133)

Attachment to Paper No. _____

☆ U.S. GOVERNMENT PRINTING OFFICE: 2003-300-153

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DECKER, JONES, MCMACKIN, MCCLANE,
HALL & BATES, P.C.
BURNETT PLAZA 2000
801 CHERRY STREET, UNIT #46
FORT WORTH, TX 76102-6836

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OCT 0 6 2004

OFFICE OF PETITIONS

In re Application of :
Freddie L. Sellers, et al. :
Application No. 10/853,595 :
Filed: May 25, 2004 :
Attorney Docket No. 6475.37027 :

ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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PERKINS, SMITH & COHEN LLP
ONE BEACON STREET
30TH FLOOR
BOSTON MA 02108

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AUG 1 8 2004
OFFICE OF PETITIONS

In re Application of :
Dennis L. Kenbeek : DECISION GRANTING
Application No. 10/853,634 : PETITION
Filed: May 25, 2004 :
Attorney Docket No. 12078-196 :

This is a decision on the petition under 37 CFR 1.10(d), filed July 19, 2004, requesting that the above-identified application be accorded a filing date of May 25, 2004, rather than the presently accorded filing date of May 24, 2004.

Petitioner alleges that the application was deposited in Express Mail service on May 25, 2004. In support of the allegation, the petition is accompanied by a copy of Express Mail label No. EL449702901US. The "date-in" indicated on the Express Mail label is May 24, 2004. However, the Express Mail label contains a United States Postal Service (USPS) stamp of May 25, 2004. Additionally, the petition is accompanied by a USPS Track & Confirm receipt, indicating that a package bearing Express Mail label No. EL449702901US was accepted in Express Mail service in Boston MA 02114, on May 25, 2004, at 5:21 PM. The same Express Mail label number was placed on the original application papers located in the official file.

In view of the above, the petition is **granted**. No petition fee is necessary.

The Office of Initial Patent Examination is directed to correct the filing date to May 25, 2004, and to mail a corrected filing receipt.

Telephone inquiries should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No.

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

MAILED

AUG 12 2009

OFFICE OF PETITIONS

In re Application of Nelson et al. Application No. 10/853,635 Filed: May 24, 2004 Docket No. 16534-518C01US Title: 7-SUBSTITUTED TETRACYCLINE COMPOUNDS	LETTER REGARDING PATENT TERM ADJUSTMENT

This is in response to the "REQEUST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed May 26, 2009. Applicants request that the determination of patent term adjustment be increased by an additional 132 days of Office delay, pursuant to 37 C.F.R. § 1.702(b). Applicant requests this correction partly on the basis that the Office will take in excess of three years to issue this patent.

In addition, applicants disclose that a period of reduction for applicant delay should be 90 days, not 89 days.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under

§ 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, 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.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

To the extent that Applicants otherwise request review of the patent term adjustment, the request is **GRANTED**.

On February 24, 2009, the Office mailed a 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 is 0 days. On May 26, 2009, Applicants timely submitted the instant comment.[2] Applicants suggest that they should have been assessed a reduction of 90 days, not 89 days, for the filing of a notice of appeal.

A review of the application history reveals that Applicants are correct.

Pursuant to 37 C.F.R. § 1.704(b), the failure to reply to an Office action within three months is a failure to engage in reasonable efforts to conclude prosecution. A final Office action was mailed on September 13, 2006, and a notice of appeal was filed on March 13, 2007, which is three months and 90 days after the mailing of the final Office action. As such, Applicants failed to engage in reasonable efforts to conclude prosecution of the application, and this delay totalled 90 days.

However, the Office incorrectly used a filing date of March 12, 2007 for the Notice of Appeal when calculating the period of Applicant delay. As such, the Office incorrectly determined that a period of 89 days of Applicant delay is associated with the submission of the Notice of Appeal. Accordingly, the period of reduction of 89 days will be removed and a period of reduction of 90 days will be entered.

The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

The Office has updated the PAIR screen to reflect the removal of the reduction of 89 days and the entry of the reduction of 90

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[2] PALM records show that the Issue Fee was received on May 26, 2009.

days. The Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance remains **0 days** (113 days of Office delay less 338 days of Applicant delay). A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski (571) 272-3225.

Christina L. Donnell for

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of updated PALM screen

Day : Wednesday

PALM INTRANET

Date: 8/12/2009
Time: 13:12:12

PTA Calculations for Application: 10/853635			
Application Filing Date:	05/24/2004	PTO Delay (PTO):	113
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	337
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-1		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
86	08/12/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		90	
85	08/12/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	89		
74	02/24/2009	MAIL NOTICE OF ALLOWANCE			
73	02/21/2009	ISSUE REVISION COMPLETED			
72	02/21/2009	DOCUMENT VERIFICATION			
71	02/21/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
70	02/21/2009	NOTICE OF ALLOWABILITY			
65	12/01/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
64	12/15/2008	DATE FORWARDED TO EXAMINER			
63	12/01/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
62	12/15/2008	DATE FORWARDED TO EXAMINER			
61	12/01/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		62	54
60	12/15/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
59	12/01/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
58	12/01/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
55	10/10/2008	CORRESPONDENCE ADDRESS CHANGE			
54	06/30/2008	MAIL FINAL REJECTION (PTOL - 326)			
53	06/26/2008	FINAL REJECTION			
52	02/20/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
51	05/21/2008	DATE FORWARDED TO EXAMINER			
50	05/07/2008	RESPONSE AFTER NON-FINAL ACTION		90	46

49	05/07/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
48	02/20/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
47	02/20/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	11/07/2007	MAIL NON-FINAL REJECTION			
45	11/05/2007	NON-FINAL REJECTION			
44	10/04/2007	MISCELLANEOUS INCOMING LETTER			
43	10/22/2007	DATE FORWARDED TO EXAMINER			
42	10/04/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
41	10/22/2007	DATE FORWARDED TO EXAMINER			
40	10/04/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
39	10/22/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
38	10/04/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
37	10/04/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
36	09/05/2007	CORRESPONDENCE ADDRESS CHANGE			
35	03/29/2007	MAIL ADVISORY ACTION (PTOL - 303)			
34	03/27/2007	ADVISORY ACTION (PTOL-303)			
33	03/13/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	03/13/2007	REFERENCE CAPTURE ON IDS			
31.7	03/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	03/13/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	03/21/2007	DATE FORWARDED TO EXAMINER			
29	03/12/2007	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
28	03/12/2007	NOTICE OF APPEAL FILED		89	26
27	03/12/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	09/13/2006	MAIL FINAL REJECTION (PTOL - 326)			
25	09/07/2006	FINAL REJECTION			
24	08/24/2006	DATE FORWARDED TO EXAMINER			
23	08/15/2006	RESPONSE AFTER NON-FINAL ACTION		61	20

22	08/15/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
21	06/20/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	03/15/2006	MAIL NON-FINAL REJECTION			
19	03/14/2006	NON-FINAL REJECTION			
18	02/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
17.7	02/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		35	15
17	02/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	02/02/2006	DATE FORWARDED TO EXAMINER			
15	01/17/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
14	01/17/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
13	11/14/2005	MAIL RESTRICTION REQUIREMENT	113		-1
12	11/09/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
11	08/26/2005	CASE DOCKETED TO EXAMINER IN GAU			
10	07/23/2004	APPLICATION RETURN FROM OIPE			
9	07/26/2004	APPLICATION IS NOW COMPLETE			
8	07/23/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
7	07/23/2004	APPLICATION RETURN TO OIPE			
6	07/21/2004	APPLICATION DISPATCHED FROM OIPE			
5	07/22/2004	APPLICATION IS NOW COMPLETE			
4	07/02/2004	CLEARED BY OIPE CSR			
3	07/02/2004	CASE CLASSIFIED BY OIPE			
2	06/18/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/24/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTE CALCULATION

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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

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OFFICE OF PETITIONS

In re Patent No. 7,595,309	:	DECISION ON REQUEST
Nelson et al.	:	FOR
Issue Date: September 29, 2009	:	RECONSIDERATION OF
Application No. 10/853,635	:	PATENT TERM ADJUSTMENT
Filed: May 24, 2004	:	
Atty Docket No. 16534-518C01US	:	

This is a decision on "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed on November 24, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that Office records be updated to include one hundred and thirty-two (132) days of examination delay pursuant to 37 C.F.R. § 1.703(b).

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

Office calculation records will be adjusted to include the one hundred and thirty-two (132) days of examination delay pursuant to 37 C.F.R. § 1.703(b).

No certificate of correction will be issued, as the patent term adjustment remains zero (116 days of examination delay pursuant to 37 C.F.R. § 1.703(a) plus the aforementioned 132 days of examination delay pursuant to 37 C.F.R. § 1.703(b) minus 362 days of Applicant delay pursuant to 37 C.F.R. § 1.704).

The $200.00 fee set forth in 37 CFR 1.18(e) will be charged to Deposit Account No. 50-0311 in due course, as authorized on the fourth page of this petition.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight
Director
Office of Petitions

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SAN DIEGO CA 92121

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OCT 29 2008

In re Application of	:	
Stein A. Lundby et al	:	
Application No. 10/853,638	:	DECISION ON PETITION
Filed: May 24, 2004	:	
Attorney Docket No. 030648	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 5, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal rejection mailed August 16, 2007, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2613 for appropriate action by the Examiner in the normal course of business on the reply received August 5, 2008.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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WASHINGTON DC 20007

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OFFICE OF PETITIONS

In re Application of	:	
HATANO, et al.	:	
Application No. 10/853,651	:	DECISION ON PETITION UNDER
Filed: May 26, 2004	:	37 CFR 1.313(c)(2) & 37 CFR 1.182
Attorney Docket No. 040302-0401	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 10, 2008, to withdraw the above-identified application from issue after payment of the issue fee and for Special Attention and Expedited Handing under 37 CFR 1.182.

The petition under 37 CFR 1.313(c)(2) is GRANTED.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 4, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

The petition under 37 CFR 1.182 is DISMISSED as moot.

The filing of a petition under 37 CFR 1.182 is unnecessary and will therefore not be considered. The petition fee of $400 is will be refunded to petitioners Deposit Account No. 19-0741.

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1793 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed 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.*

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OFFICE OF PETITIONS

In re Application of	:	
Sherman and Gartstein	:	
Application No. 10/853,658	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No.: 9262	:	

This is a decision on the petition filed November 12, 2004, titled "Response to Notice of Omitted Items in Nonprovisional Application". The instant petition will be treated as a petition under 37 CFR 1.182 to vacate the Notice of Omitted Items in Nonprovisional Application.

The petition is **dismissed**.

On May 25, 2004, the above-identified application was filed. However, on October 15, 2004, the Office of Initial Patent Examination mailed a Notice to of Omitted Items in Nonprovisional Application, stating that application had been accorded a filing date of May 25, 2004, and advising applicant that Figures 27-56 as described in the specification appeared to have been omitted. The notice allowed a two-month period for reply.

In response, on November 12, 2004, applicant filed the present petition. Petitioner maintains that subject application only included 26 figures contained in four sheets of drawings. Petitioner further maintains the subject application was accompanied by a copy of application 10/373,251 which was filed as part of an Information Disclosure Statement and that the Office transposed the specification for application 10/373, 251 with that of 10/853,658. As evidence of the same, petitioner indicates that specification for application 10/373,251 cited attorney docket number 9163 and the specification for application number 10/853,658 cited attorney docket number 9262.

A review of the application 10/853,658 revealed a specification, citing attorney docket number 9163, referencing 56 figures. No other specification was found in application 10/853,658. A review of application 10/373,251 revealed a specification, citing attorney docket number 9163, also referencing 56 figures. There was no specification found in either application 10/853,658 or application 10/373,251 that cited attorney docket number 9262 and referenced on 26 figures. It is further noted that the Office date-stamped postcard acknowledging receipt of four sheets of drawings, among other items, is not dispositive of the Offices receipt of a specification that only referenced 26 figures. The postcard only evidences that the Office received 4 sheets of drawings on that date but is no indication of the number of figures contained in those four sheets, which is what is at issue presently.

Based on the evidence provided and the review of the relevant application files, the Notice of Omitted Items of Nonprovisional Application was properly issued because the only specification found with original application papers references figures 1 through 56 and petitioner did not provide adequate proof

to overturn the presumption that the Patent and Trademark Office file, as the official file record, is accurate.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 25, 2004. Petitioner should file a preliminary amendment removing references in the specification to the omitted figures before the first action on the merits.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :
Sherman and Gartstein :
Application No. 10/853,658 : ON PETITION
Filed: May 25, 2004 :
Attorney Docket No.: 9262 :

This is a decision on the petition filed April 11, 2005, titled "Petition under 37 CFR 1.182 for a Question Not Specifically Provided For". The instant petition will be treated as a petition under 37 CFR 1.182 to vacate the Notice of Omitted Items in Nonprovisional Application.

The petition is **dismissed**.

On May 25, 2004, the above-identified application was filed. However, on October 15, 2004, the Office of Initial Patent Examination mailed a Notice of Omitted Items in Nonprovisional Application, stating that the application had been accorded a filing date of May 25, 2004, and advising applicant that Figures 27-56 as described in the specification appeared to have been omitted. The notice allowed a two-month period for reply.

In response, on November 12, 2004, applicant filed a petition under 37 CFR 1.182. Petitioner argued that subject application only included 26 figures contained in four sheets of drawings. Petitioner further argued the subject application was accompanied by a copy of application 10/373,251 which was filed as part of an Information Disclosure Statement (IDS) and that the Office transposed the specification for application 10/373, 251 with that of 10/853,658. The petition of November 12, 2004, was dismissed by a decision mailed March 9, 2005.

The instant petition was then filed on April 11, 2005, wherein petitioner again argues that the specification for application 10/853,658 was transposed with the specification for application 10/373,251 that was included as part of an Information Disclosure Statement filed in application 10/853,658. Petitioner maintains that the specification that is properly attributed to application 10/853,658 only contained 26 pages of specification and 4 sheets of drawings that included Figures 1-26.

A review of the relevant application files reveals that the following were contained in the applications as of the date of mailing of this decision:

APPLICATION 10/853,658, as filed on May 25, 2004, included a thirty (30)-page specification that referenced figures 1-56. The application also included 6 pages of claims, with 20 claims. The application included 4 sheets of drawings, which included figures 1-26. The application also included 3 pages of an IDS.

<u>APPLICATION 10/373,251</u>, as filed of February 24, 2003, included thirty (30) pages of specification, 20 claims contained on 6 pages, and 56 figures contained on 13 sheets of drawings.

Petitioner will note that this assessment of the relevant contents of the applications differs from the chart provided by petitioner in the instant petition as petitioner's chart indicates that application 10/373,251 contained 37 pages of the specification. Petitioner will further note that after several reviews of the relevant applications, no specification containing only twenty-six pages was found. It is, therefore, concluded that the 26 page specification that was purportedly filed in application 10/853,658 was not transposed with the specification of application 10/373,251. *Notwithstanding petitioner's footnote to the contrary, the undersigned did, indeed, return petitioner's phone call and left a voice mail message to inform petitioner that only an identical 30 page specification was found in both applications and that no specification was found with the Information Disclosure Statement. As a professional courtesy, it is requested that petitioner accurately reflect the communications between petitioner and the undersigned.*

While no 26-page specification was found in the relevant applications, further review of the Office date-stamped postcard revealed that the Office acknowledged receiving Form PTO-SB08 and copies of two references, including the WTO reference and a copy of the specification of 10/373,251. This is in addition to the missing 26-page specification. The evidence is, therefore, convincing that a specification was filed that was not ultimately matched to the application. The petition must be dismissed, however, because the 26-page specification attributable to application 10/863,858 was not found with either application and petitioner did not provide a copy of the same with the petition. Petitioner must, therefore, provide a copy of the 26-page specification. Petitioner must also provide a complete copy of the application used as a reference (10/373,251), including the claims and drawings, because all that was found was the 30-page specification. Once received, the specification currently in application 10/853,658 will be replaced with the 26-page specification and the copy of application 10/373,251 will be matched with the Information Disclosure Statement filed May 25, 2004. Thereafter, the application will be directed to the Office of Initial Patent Examination for further processing.

Further correspondence may be directed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

1FW

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I hereby certify that I have reasonable basis to expect that, on the date shown below, this correspondence is being submitted as indicated below:

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DONITA KONRAD
Name — Registration No (if applicable)

Donita Konrad
Signature

5/23/2005
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/853,658
Applicant(s)	:	Faiz Feisal Sherman et al.
Filed	:	May 25, 2004
Title	:	Method For Manufacturing Microstructures Having Hollow Microelements Using Fluidic Jets During A Molding Operation
TC/A.U.	:	1762
Examiner	:	
Conf. No.	:	4877
Docket No.	:	9262
Customer No.	:	27752

RESPONSE TO DECISION ON PETITON DATED MAY 3, 2005

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified Decision on Petition requires the Petitioner to provide a copy of the 26-page instant specification (Ser. No. 10/853,658), including all claims and drawings. Furthermore, the Decision states that once received, the specification currently in the instant application will be replaced with the 26-page specification and a copy of the 30-page specification (Ser. No. 10/373,251) will be matched with the Information Disclosure Statement filed May 25, 2004. Finally, the Decision states the application will be directed to the Office of Initial Patent Examination for further processing.

In compliance with the above Decision, Petitioners have included a copy of the 26-page specification, including all claims and drawings for Application Ser. No. 10/853,658. Petitioners have also included a complete copy of the application used as a reference (Ser. No. 10/373,251), including all claims and drawings. Petitioners gratefully

and respectfully acknowledge the manner in which this is handled by the Office of Petitions.

Petitioners acknowledge that the Petition faxed April 11, 2005 included a footnote stating that Petitioners attorney called the Petitions Attorney at the USPTO. The footnote further stated that none of the calls was returned.

The Decision notes that Kenya McLaughlin did in fact return Petitioner's phone call and left a voice mail for Petitioner. The Decision requests that the record be corrected to accurately reflect communications between the Petitioner and Ms. McLaughlin.

In fact, Ms. McLaughlin, the Petitions Attorney, did return Petitioners' phone calls and did leave a voice message. The voice message was received April 12, 2005. Petitioners acknowledge the same.

As noted above, this Petition was filed April 11, 2005. The footnote was accurate and correct as of the date of filing. However, to complete and correct the record, Petitioners respectfully acknowledge and recognize the voice message of Kenya McLaughlin, Petitions Attorney, which was received April 12, 2005. Furthermore, Petitioners respectfully note this phone message was directed to the substance of the outstanding issues.

Petitioners again gratefully acknowledge the manner in which Ms. McLaughlin has handled this matter and have included herewith all items which are required to be provided by the Decision on Petition mailed May 3, 2005. Processing by the Office of Initial Patent Examination is respectfully requested.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY

By _____
Signature
Larry L. Huston
Typed or Printed Name
Registration No. 32,994
(513) 634-9358

May 23, 2005
Customer No. 27752

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In re Application of	:	
Sherman and Gartstein	:	
Application No. 10/853,658	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No.: 9262	:	

This is a decision on the petition filed April 11, 2005, titled "Petition under 37 CFR 1.182 for a Question Not Specifically Provided For". The instant petition will be treated as a petition under 37 CFR 1.182 to vacate the Notice of Omitted Items in Nonprovisional Application.

The petition is **dismissed**.

On May 25, 2004, the above-identified application was filed. However, on October 15, 2004, the Office of Initial Patent Examination mailed a Notice of Omitted Items in Nonprovisional Application, stating that the application had been accorded a filing date of May 25, 2004, and advising applicant that Figures 27-56 as described in the specification appeared to have been omitted. The notice allowed a two-month period for reply.

In response, on November 12, 2004, applicant filed a petition under 37 CFR 1.182. Petitioner argued that subject application only included 26 figures contained in four sheets of drawings. Petitioner further argued the subject application was accompanied by a copy of application 10/373,251 which was filed as part of an Information Disclosure Statement (IDS) and that the Office transposed the specification for application 10/373, 251 with that of 10/853,658. The petition of November 12, 2004, was dismissed by a decision mailed March 9, 2005.

The instant petition was then filed on April 11, 2005, wherein petitioner again argues that the specification for application 10/853,658 was transposed with the specification for application 10/373,251 that was included as part of an Information Disclosure Statement filed in application 10/853,658. Petitioner maintains that the specification that is properly attributed to application 10/853,658 only contained 26 pages of specification and 4 sheets of drawings that included Figures 1-26.

A review of the relevant application files reveals that the following were contained in the applications as of the date of mailing of this decision:

APPLICATION 10/853,658, as filed on May 25, 2004, included a thirty (30)-page specification that referenced figures 1-56. The application also included 6 pages of claims, with 20 claims. The application included 4 sheets of drawings, which included figures 1-26. The application also included 3 pages of an IDS.

<u>APPLICATION 10/373,251</u>, as filed of February 24, 2003, included thirty (30) pages of specification, 20 claims contained on 6 pages, and 56 figures contained on 13 sheets of drawings.

Petitioner will note that this assessment of the relevant contents of the applications differs from the chart provided by petitioner in the instant petition as petitioner's chart indicates that application 10/373,251 contained 37 pages of the specification. Petitioner will further note that after several reviews of the relevant applications, no specification containing only twenty-six pages was found. It is, therefore, concluded that the 26 page specification that was purportedly filed in application 10/853,658 was not transposed with the specification of application 10/373,251. *Notwithstanding petitioner's footnote to the contrary, the undersigned did, indeed, return petitioner's phone call and left a voice mail message to inform petitioner that only an identical 30 page specification was found in both applications and that no specification was found with the Information Disclosure Statement. As a professional courtesy, it is requested that petitioner accurately reflect the communications between petitioner and the undersigned.*

While no 26-page specification was found in the relevant applications, further review of the Office date-stamped postcard revealed that the Office acknowledged receiving Form PTO-SB08 and copies of two references, including the WTO reference and a copy of the specification of 10/373,251. This is in addition to the missing 26-page specification. The evidence is, therefore, convincing that a specification was filed that was not ultimately matched to the application. The petition must be dismissed, however, because the 26-page specification attributable to application 10/863,858 was not found with either application and petitioner did not provide a copy of the same with the petition. Petitioner must, therefore, provide a copy of the 26-page specification. Petitioner must also provide a complete copy of the application used as a reference (10/373,251), including the claims and drawings, because all that was found was the 30-page specification. Once received, the specification currently in application 10/853,658 will be replaced with the 26-page specification and the copy of application 10/373,251 will be matched with the Information Disclosure Statement filed May 25, 2004. Thereafter, the application will be directed to the Office of Initial Patent Examination for further processing.

Further correspondence may be directed as follows:

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By facsimile: (703) 872-9306

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of
Sherman and Garstein
Application No. 10/853,658
Filed: May 25, 2004
Attorney Docket No. **2335-0106**

DECISION GRANTING PETITION

This is a decision on the petition filed May 25, 2005, which is being treated as a renewed petition under 37 CFR 1.182 to vacate the Notice of Omitted Items in Nonprovisional Application.

The renewed petition is **granted**.

On May 25, 2004, the above-identified application was filed. However, on October 15, 2004, the Office of Initial Patent Examination mailed a Notice of Omitted Items in Nonprovisional Application, stating that the application had been accorded a filing date of May 25, 2004, and advising applicant that Figures 27-56 as described in the specification appeared to have been omitted. The notice allowed a two-month period for reply.

In previous petitions filed, petitioner argued that the specification intended for application 10/853,658 was transposed with the specification for application 10/373,251 that was included as part of an Information Disclosure Statement (IDS) filed in application 10/853,658. Petitioner maintained that the specification that is properly attributed to application 10/853,658 consisted of only 26 pages of the specification and four sheets of drawings that included Figures 1-26.

In the decision mailed May 3, 2005, the undersigned indicated that the no 26-page specification was found in either application 10/853,658 of application 10/373,251, but that the Office date-stamped postcard received in application 10/853,658 acknowledged receiving Form PTO-SB08 and copies of two references, including the WTO reference and a copy of the specification of 10/373,251. This was in addition to the missing 26-page specification. It was further noted that although the evidence was convincing that a 26-page specification intended to be the specification for application 10/853,658 was filed that was not matched to the application, the petition of April 11, 2005, was dismissed because a copy of the 26-page specification was not filed with the petition. The instant renewed petition included a copy of the 26-page specification and a copy of the specification for application 10/373,251 that was intended to be included with the IDS filed May 25, 2004.

It is concluded that the Notice to File Omitted Items of Nonprovisional Application noting the omission of Figures 27-56 was issued in error because the specification filed with original disclosure for application 10/853,658 only contained 26 pages of specification referencing only Figures 1through 26, but that the specification was either lost or mismatched. The Notice to File Omitted Items of Nonprovisional Application is vacated, accordingly.

It is requested that the Office of Initial Patent Examination accord the copy of the specification, claims, abstract, and drawings filed with the instant petition be accorded a filing date of May 25, 2004, and be recognized as the original disclosure for application 10/853,658. It also requested that the copy of the specification for application 10/373,251 filed with the instant petition on May 25, 2005, be accorded a filing date of May 25, 2004, and included as part of the IDS filed on that date.

The application file is being directed to the Office of Initial Patent Examination for further processing.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:
Kia Silverbrook	:
Application No. 10/853659	: DECISION ON PETITION
Filed: 05/26/2004	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. BAL93US	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on November 20, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the

benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2851 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

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
10/853,659	05/26/2004	2851	770	BAL93US	8	1

CONFIRMATION NO. 4873

CORRECTED FILING RECEIPT

24011
SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN, 2041
AUSTRALIA

OC000000028856589

Date Mailed: 03/27/2008

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 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)

Kia Silverbrook, Balmain, AUSTRALIA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 09/922,275 08/06/2001 PAT 6,803,989
which is a CIP of 09/113,053 07/10/1998 PAT 6,362,868

Foreign Applications

AUSTRALIA PO7979 07/12/1997
AUSTRALIA PO7991 07/15/1997

If Required, Foreign Filing License Granted: 07/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/853,659**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Image sensing and printing device

Preliminary Class

396

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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OFFICE OF PETITIONS

Cozen O'Connor, P.C.
1900 Market Street
Philadelphia, PA 19103-3508

In re Application of	:	
Steven A. Hofstadler et al.	:	
Application No. 10/853,660	:	DECISION ON PETITION
Filed: May 25, 2004	:	TO WITHDRAW
Attorney Docket No. IBIS0078-100 (DIBIS-0060US)	:	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 27, 2005.

The request is **moot because a revocation of power of attorney has been accepted**.

A review of the file record indicates that the power of attorney to Paul K. Legaard and all attorneys/agents of record have been revoked by the assignee of the patent application on March 28, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272- 4618.

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Isis Pharmaceuticals, Inc.
1896 Rutherford Road
Carlsbad, CA 92008

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C/O CPA GLOBAL
P.O. BOX 52050
MINNEAPOLIS, MN 55402

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FEB 24 2009

OFFICE OF PETITIONS

In re Application of :
Nobuyasu Yamaguchi et al :
Application No. 10/853,667 : ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. 042438

This is a decision on the petition, filed February 23, 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 February 2, 2009 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 2624 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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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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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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OFFICE OF PETITIONS

In re Application of	:	
Kano et al.	:	DECISION ON APPLICATION
Application No. 10/853,670	:	for
Filed: May 26, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. 023971-0421	:	

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.704(d), filed March 27, 2008. This decision is made in light of the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.704(d) - SUPPLEMENTAL STATEMENT filed August 13, 2008[1]. Applicant requests that the determination of patent term adjustment under 35 U.S.C. 154(b) at the time of mailing of the notice of allowance be corrected from thirty-one (31) days to sixty-six (66) days.

The application for patent term adjustment is **GRANTED**.

On December 31, 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 31 days. On March 27, 2008, applicant timely submitted the instant application for patent term adjustment[2]. Applicant maintains that the period of reduction of 35 days entered pursuant to 37 CFR 1.704(c)(8), for the filing of an Information Disclosure Statement (IDS) on January 5, 2007 was entered in error. Applicant contends that the IDS contained the certification pursuant to § 1.704(d), and thus, its filing did not constitute a failure to engage in

[1] At the request of the undersigned, attorney for applicant submitted this supplemental request for reconsideration of patent term adjustment. Under the circumstances of this application, this request was made in hopes of assuring that the patent issues with the correct patent term adjustment.
[2] PALM records show that the Issue Fee was received on March 27, 2008.

reasonable efforts to conclude prosecution of this application under 37 C.F.R. § 1.704(c)(8).

A terminal disclaimer was filed in this application on November 7, 2007.

Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. It is undisputed that after filing a response on December 1, 2006, on January 5, 2007, applicant filed an IDS. The record does not support a conclusion that the IDS was expressly requested by the examiner.

A review of the IDS filed January 5, 2007, reveals that it did not include the proper § 1.704(d) statement. The required statement states, in pertinent part, that:

> Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

Applicants are reminded that § 1.704(d) was revised, effective May 24, 2004. This revision requires that the statement include the language "each item of information contained in the information disclosure statement was <u>first</u> cited ..." for the exception to apply. <u>See</u> 69 FR 21704, Apr. 22, 2004. Moreover, the statement among other things must state that the IDS was first cited in "any" communication, not a communication. Thus, entry of the reduction of 35 days was warranted.

On August 13, 2008, applicants filed a supplemental statement. Therein, attorney Paul Strain has provided the required statement, certifying that with respect to the information disclosure statement filed on January 5, 2007, 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. It is noted that attorney Strain filed

the IDS on January 5, 2007. The reduction of 35 days is being removed.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance is sixty-six (66) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Wednesday

PALM INTRANET

Date: 8/13/2008
Time: 18:38:28

PTA Calculations for Application: 10/853670			
Application Filing Date:	05/26/2004	PTO Delay (PTO):	157
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	126
Post-Issue Petitions:	0	Total PTA (days):	66
PTO Delay Adjustment:	35		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
89	08/11/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	35		
73	12/31/2007	MAIL NOTICE OF ALLOWANCE			
72	12/27/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
71	12/27/2007	ISSUE REVISION COMPLETED			
69	12/26/2007	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
68	12/26/2007	DOCUMENT VERIFICATION			
67	12/12/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
66	12/26/2007	NOTICE OF ALLOWABILITY			
65	12/06/2007	MISCELLANEOUS INCOMING LETTER			
61	07/30/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
60	11/13/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
59	10/30/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
58	11/08/2007	DATE FORWARDED TO EXAMINER			
57	11/08/2007	TO CLOSE THE A/R RECORD AND RESET THE STATUS FOR EXPIRED SUSPENSIONS.			
56	03/08/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
55	08/06/2007	MAIL LETTER SUSPENDING PROSECUTION AT APPLICANT'S REQUEST			
53	08/06/2007	LETTER OF SUSPENSION - APPLICANT INITIATED			
52	07/30/2007	REFERENCE CAPTURE ON IDS			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

51	07/30/2007	FILED			
50	08/06/2007	DATE FORWARDED TO EXAMINER			
49	07/30/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	08/06/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	07/30/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	07/30/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
45	02/28/2007	MAIL FINAL REJECTION (PTOL - 326)			
44	02/27/2007	FINAL REJECTION			
43	01/05/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42	12/01/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
41	09/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
40	01/05/2007	REFERENCE CAPTURE ON IDS			
39.7	01/05/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		35	36
39	01/05/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38.7	12/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	12/01/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	12/18/2006	DATE FORWARDED TO EXAMINER			
36	12/01/2006	RESPONSE AFTER NON-FINAL ACTION		91	31
35	12/01/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	09/21/2006	REFERENCE CAPTURE ON IDS			
33.7	09/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	09/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	06/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
31	06/01/2006	MAIL NON-FINAL REJECTION			
30	05/30/2006	NON-FINAL REJECTION			
29	01/25/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
28	05/26/2004	INFORMATION DISCLOSURE STATEMENT			

		CONSIDERED			
27	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
26	03/20/2006	DATE FORWARDED TO EXAMINER			
25	02/28/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
24	02/28/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	01/25/2006	REFERENCE CAPTURE ON IDS			
22.7	01/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	01/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	02/09/2006	MAIL SUPPLEMENTAL RESTRICTION / ELECTION REQUIREMENT			
20	02/06/2006	SUPPLEMENTAL RESTRICTION			
19	12/30/2005	MAIL RESTRICTION REQUIREMENT	157		-1
18	12/27/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
17	03/23/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	03/23/2005	CASE DOCKETED TO EXAMINER IN GAU			
15	05/26/2004	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
14	05/26/2004	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
13	05/26/2004	REFERENCE CAPTURE ON IDS			
12.7	05/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	05/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	05/26/2004	PRELIMINARY AMENDMENT			
10	10/07/2004	TRANSFER INQUIRY TO GAU			
9	07/21/2004	APPLICATION RETURN FROM OIPE			
8	07/21/2004	APPLICATION RETURN TO OIPE			
7	07/21/2004	APPLICATION DISPATCHED FROM OIPE			
6	07/22/2004	APPLICATION IS NOW COMPLETE			
5	07/07/2004	CLEARED BY L&R (LARS)			
4	06/29/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	06/29/2004	CASE CLASSIFIED BY OIPE			
2	06/08/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	05/26/2004	INITIAL EXAM TEAM NN			

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JOSEPH J. LAKS, VICE PRESIDENT
THOMAS LICENSING LLC
PATENT OPERATIONS
PO BOX 5312
PRINCETON, NJ 08543-5312

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OCT 01 2007

OFFICE OF PETITIONS

In re Application of	:	
Pierluigi Lo MUZIO, et al	:	
Application No. 10/853,679	:	DECISION ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. PD030065	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 5, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before April 16, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed January 16, 2007. Accordingly, the date of abandonment of this application is April 17, 2007 .

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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.

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 Diane Goodwyn at (571) 272-6732.

This application is being referred to Publishing Division for processing into a patent.

April Wise
Petitions Examiner
Office of Petitions

cc: ROBERT B. LEVY
THOMSON LICENSING LLC
2 INDEPENDENCE WAY, SUITE 200
PRINCETONM NJ 08540

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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): PD030065

First named Inventor: Pierluigi Lo Muzio et al.

Application No.: 10/853,679 Art Unit: 2627

Filed: May 25, 2004 Examiner: Nabil Z. Hindi

Title: WOBBLE DEMODULATION FOR HIGH DENSITY OPTICAL RECORDING MEDIA

Customer #: 24498

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.
[xx] Other than small entity – fee $ 1,500.00 (37 CFR 1.17(m)) 07/06/2007 HDEHESS2 00000053 070832 10853679
01 FC:1453 1500.00 DA

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 $ 1,700.00.
[ ] has been paid previously on _____.
[X] 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.

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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.

3. Terminal disclaimer with disclaimer fee

[XXX] 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
Robert B. Levy Typed or printed name	28,234 Registration Number, if applicable
Thomson Licensing LLC 2Independence Way Suite 200 Address	609-734-6820 Telephone Number
Princeton, NJ 08540 Address	

Enclosures: [X] Fee Payment

[ ] Reply

[ ] Terminal Disclaimer Form

[ ] Additional sheets containing statements establishing unintentional delay

[X] Other: Issue fee transmittal

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.

[X] Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

July 5 2007
Date

Tracey Campbell
Signature

Tracey Campbell
Typed or printed name of person signing certificate

PAGE 2/3 * RCVD AT 7/5/2007 12:09:36 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/4 * DNIS:2738300 * CSID:609 734 6888 * DURATION (mm-ss):01-20

PART B - FEE(S) TRANSMITTAL

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JUL 0 5 2007

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

24498 7590 01/16/2007

THOMSON LICENSING INC.
PATENT OPERATIONS
PO BOX 5312
PRINCETON, NJ 08543-5312

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

Tracey Campbell	(Depositor's name)
Tracey Campbell	(Signature)
July 5 2007	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/853,679	05/25/2004	Pierluigi Lo Muzio	PD030065	6736

TITLE OF INVENTION: WOBBLE DEMODULATION FOR HIGH DENSITY OPTICAL RECORDING MEDIA

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	$1400	$300	$0	$1700	04/16/2007

EXAMINER	ART UNIT	CLASS-SUBCLASS
HINDI, NABIL Z	2627	369-047100

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 Joseph J. Laks
2 Robert B. Levy
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. 07/06/2007 HDEREGS2 00000053 070832 10853679
(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)
02 FC:1501 1400.00 DA
03 FC:1504 300.00 DA
04 FC:8001 9.00 DA
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 submitted:
☒ Issue Fee
☒ Publication Fee (No small entity discount permitted)
☒ Advance Order - # of Copies 3

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)
☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 07-0832 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)
☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

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 [signature] Date 7/5/07

Typed or printed name Robert B. Levy Registration No. 28,234

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.
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PAGE 3/3 * RCVD AT 7/5/2007 12:09:36 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/4 * DNIS:2738300 * CSID:609 734 6888 * DURATION (mm-ss):01-20 PAGE.03 **

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SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN 2041 AU AUSTRALIA

COPY MAILED

OCT 1 7 2008

OFFICE OF PETITIONS

In re Application of	:
Silverbrook, Kia	:
Application No. 10/853,681	: DECISION GRANTING PETITION
Filed: May 26, 2004	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. BAL94US	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 30, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified by 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the 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 the undersigned at (571) 272-3282.

This matter is being referred to Technology Center Art Unit 2851 for appropriate action on the amendment filed September 30, 2008, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

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
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
10/853,681	05/26/2004	2851	770	BAL94US	7	1

CONFIRMATION NO. 6748

CORRECTED FILING RECEIPT

24011
SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN, 2041
AUSTRALIA

OC000000032636895

Date Mailed: 10/16/2008

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)

Kia Silverbrook, Balmain, AUSTRALIA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 09/922,275 08/06/2001 PAT 6,803,989
which is a CON of 09/113,053 07/10/1998 PAT 6,362,868

Foreign Applications

AUSTRALIA P07979 07/12/1997
AUSTRALIA PO7991 07/15/1997

If Required, Foreign Filing License Granted: 07/21/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/853,681**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method of capturing and processing sensed images

Preliminary Class

355

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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CHICAGO IL 60606

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DEC 23 2004

OFFICE OF PETITIONS

In re Application of	:
Andrew Smith et al.	:
Application No. 10/853,700	: DECISION REFUSING STATUS
Filed: May 24, 2004	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 03-547-A	:

This is in response to the petition under 37 CFR 1.47(a), filed November 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(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on May 24, 2004, naming Andrew Smith, Nik Neymeyer, Dennis Essenmacher, Tracy Meade, Rebecca Lohr, Sunil Reddy, Madana Venkata and Corey Kirk as joint inventors, but without a signed declaration.

Accordingly, on July 23, 2004, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on November 23, 2004, the present petition was filed with a two month extension of time. Petitioners seek status under 37 CFR 1.47(a) because joint inventors Smith, Neyermeyer, and Kirk either refuse to cooperate with the filing of the application or after diligent efforts, can't be located.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The present petition lacks items (1).

Petitioners have shown that the application papers were mailed to non-signing inventors Smith, Neyermeyer, and Kirk at their last known addresses and petitioners have shown that Mr. Smith and Mr. Neyermeyer actually received the packages but thus have not returned executed copies of the oath or declaration or assignment, as requested. However, while petitioners have shown that the application papers mailed to non-inventor Kirk have been returned undeliverable, petitioners have not shown that diligent efforts have been made to locate the non-signing inventor.[1]

Petitioners must however provide details, in an affidavit or declaration of facts by a person with first hand knowledge of the details, of the additional efforts to locate Mr. Kirk, such as Internet, e-mail, or telephone directory searches, which have been undertaken to locate him, send or give a copy of the application papers to him, and request that he sign and return the declaration. If repeated attempts to contact Mr. Kirk by telephone, mail, and e-mail, are unsuccessful, petitioners will have established that Mr. Kirk cannot be found despite diligent efforts.

If Mr. Kirk refuses in writing to sign the declaration, petitioners should provide a copy of that written refusal with any renewed petition. If a verbal refusal to sign is made to a person, details should be given in an affidavit or declaration of facts by a person having first hand knowledge of the facts of refusal.

With respect to the petition fee, please be advised that effective November 22, 2004, the petition fee has been increased from $130.00 to $200.00. Therein, deposit account no. 13-2490 has been charged in the amount of $200.00. See the Notice published in the Federal Register on September 21, 2004 and in the Official Gazette of the United States Patent and Trademark Office on October 12, 2004.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1] MPEP 409.03(d).

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CHICAGO IL 60606

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MAY 25 2005

OFFICE OF PETITIONS

In re Application of :
Andrew Smith et al. :
Application No. 10/853,700 : DECISION ACCORDING STATUS
Filed: May 24, 2004 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 03-547-A :

This is in response to the request for reconsideration filed under 37 CFR 1.47(a), on April 25, 2005, in response to the decision mailed December 23, 2004, dismissing the petition filed November 23, 2004.

The petition is **GRANTED**.

The above-identified application was filed on May 24, 2004, naming Andrew Smith, Nik Neymeyer, Dennis Essenmacher, Tracy Meade, Rebecca Lohr, Sunil Reddy, Madana Venkata and Corey Kirk as joint inventors, but without a signed declaration. Accordingly, on July 23, 2004, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration. In response, a petition was filed November 23, 2004 with a two month extension of time to accord status under 37 CFR 1.47(a) because joint inventors Smith, Neyermeyer, and Kirk either refused to cooperate with the filing of the application or after diligent efforts, couldn't be located. The petition was dismissed in a decision mailed December 23, 2004 because while it was established that Smith and Neyermeyer, by their actions had refused to cooperate with the filing of the application, petitioners had not shown that diligent efforts were made to locate Kirk.[1]

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

---

[1] MPEP 409.03(d).

Comes now petitioner with an oath or declaration executed by joint inventor Kirk and a request for a two month extension of time, thus, 37 CFR 1.47 status is only sought for non-signing inventors Smith and Neyermeyer.

The extension of time fee in the amount of $450.00 has been charged to deposit account no. 13-2490.

All requirements under 37 CFR 1.47(a) therefore having been met from the evidence presented in the petition filed November 23, 2004, as provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This application is being forwarded to the Technology Center 3661 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ANDREW SMITH
117 CRANDALL COURT, NE
CEDAR RAPIDS, IA 52402

NIK NEYERMEYER
1155 LONGVIEW DRIVE
MARION, IA 52302

COPY MAILED

MAY 2 5 2005

OFFICE OF PETITIONS

In re Application of
Andrew Smith et al.
Application No. 10/853,700
Filed: May 24, 2004
For: ENTERPRISE RESOURCE PLANNING SYSTEM WITH INTEGRATED VEHICLE DIAGNOSTIC AND INFORMATION SYSTEM

Dear Mr. Smith and Mr. Neyermeyer:

You are named as joint inventors in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as joint inventors.

As named inventors you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost 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 (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:
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

UNITED STATES PATENT AND TRADEMARK OFFICE

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FREESCALE SEMICONDUCTOR, INC.
LAW DEPARTMENT
7700 WEST PARMER LANE MD:TX32/PL02
AUSTIN, TX 78729

COPY MAILED

SEP 29 2006

OFFICE OF PETITIONS

In re Application of Stephens et al. :
Application No. 10/853,701 :
Filing Date: May 25, 2004 :
Attorney Docket No. SC13267TP :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed June 27, 2006, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed March 21, 2006, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on June 22, 2006.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The Office of Publications will be informed of the instant decision and will issue the application as a patent in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

SMITH PATENT OFFICE
1901 Pennsylvania Ave., N.W.
Suite 901
Washington, DC 20006-3433

MAIL

JAN 14 2008

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of	:	
Shigeru Omatsu *et al.*	:	
Serial No.: 10/853, 706	:	
Filed: May 26, 2004	:	DECISION ON PETITION
For: REGION DETECTING METHOD AND	:	*ACCEPTANCE OF COLOR DRAWINGS*
REGION DETECTING APPARATUS	:	

This is a decision on the petition under 37 CFR §1.84(a)(2) filed October 29, 2007 requesting acceptance of color drawings.

The petition requests that the color drawings identified in Figures 5A-5C 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) sets 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 is **GRANTED**.

Kenneth A. Wieder

Kenneth Wieder
Special Program Examiner
Technology Center 2600
Communications

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NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

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MAR 29 2005

OFFICE OF PETITIONS

In re Application of
Mierau, Reid, Nohren, and Larsen
Application No.: 10/853,709
Filed: May 26, 2004
Attorney Docket No: 13-125
For: **STATIC FILTRATION MEDIA VESSELS**

: DECISION ACCORDING
: RULE 47(a) STATUS

This is in response to the petition under 37 CFR 1.47(a), filed February 23, 2005.

The petition is **GRANTED**.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

The above-cited application was filed on May 26, 2004, without an oath or declaration. A Notice to File Missing Parts of Nonprovisional Application was mailed on July 23, 2004, requiring an executed oath or declaration and surcharge and payment of the filing and claims fees. The notice allowed an extendable period for reply of two months from its mailing date. The instant petition was filed responsively on February 23, 2005, with a request for an extension of time within the fifth month. In the instant petition, petitioner maintains that the executrix of the estate of inventor Reid has constructively refused to join the prosecution of the application.

Petitioner has shown the executrix of the estate of inventor Reid has constructively refused to join the prosecution of the application after having been presented with the application papers. The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This application will be directed to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin

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

Maryanne Reid
301 6th Avenue North
Safety Harbor, Florida 34695-3536

COPY MAILED

MAR 29 2005

OFFICE OF PETITIONS

In re Application of :
Mierau, Reid, Nohren, and Larsen :
Application No.: 10/853,709 : LETTER
Filed: May 26, 2004 :
Attorney Docket No:13-125 :
For: **STATIC FILTRATION MEDIA VESSELS**

Dear Ms. Reid:

You are, in your capacity as executrix of the estate of Henry Reid, 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 in your capacity as executrix of the estate of Henry Reid .

As a joint 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 Kenya A. McLaughlin at (571) 272-3222. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201-4714

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MAY 23 2005

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of	:
Vincent J. Kalish	:
Serial No.: 10/853,714	: STATUS LETTER
Filed: May 28, 2004	:
Attorney Docket No.: 2824-246	:

This is in response to applicants' attorneys' request, filed May 3, 2005, to withdraw from representation in the above identified application.

37 CFR 10.40 Withdrawal from employment.
(b) Mandatory withdrawal . A practitioner representing a client before the Office shall withdraw from employment if:
(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;
(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;
(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or
(4) The practitioner is discharged by the client.
(c) Permissive withdrawal. If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:
(1) The petitioner's client:
(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
(ii) Personally seeks to pursue an illegal course of conduct;
(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;
(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;
(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or
(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.
(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;
(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;
(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

Applicants' attorney has provided no reason for withdrawal, as required.

The request to withdraw is **DISMISSED**.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office facsimile number 571-273-8300.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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United States Patent and Trademark Office
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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

Mail Date: 04/20/2010

Applicant	: Thierry Lacome	: DECISION ON REQUEST FOR
Patent Number	: 7592470	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/853,725	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1519** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/29/09 Paper No.: ——

TO SPE OF : ART UNIT 2861

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/853726 Patent No.: 7165826 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes do not apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

12-8-09

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LAW OFFICES OF GARY R. STANFORD
330 W OVERLOOK MOUNTAIN RD
BUDA TX 78610

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OFFICE OF PETITIONS

In re Application of	:	
Walters et al.	:	
Application No. 10/853,733	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. INSL.0097CIP	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 10, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to the Publishing Division for processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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NATIONAL IP RIGHTS CENTER, LLC
SUITE 400
550 TOWNSHIP LINE ROAD
BLUE BELL, PA 19422

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NOV 21 2006
OFFICE OF PETITIONS

In re Application of	:	
Fattohi, Samir	:	
Application No. 10/853,736	:	ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. 10652-2	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 31, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

This matter is being referred to the Publishing Division for processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 400
MCLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of
Christian CHUDOBA
Application No. 10/853,747
Filed: May 26, 2004
Attorney Docket No. 449122073300

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 31, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morrison & Foerster has been revoked by the assignee of the patent application on October 17, 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 Diane Goodwyn at 571-272-6735.

April M. Wise
Petitions Examiner
Office of Petitions

cc: BELL, BOYD & LLOYD, LLP
PO BOX 1135
CHICAGO, IL 60690

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In re Application of	:	
West et al.	:	
Application No. 10/853,765	:	DECISION ON PETITION
Filed: May 26, 2004	:	TO WITHDRAW
Attorney Docket No. 544092000900	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 28, 2005.

The request is **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 November 3, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the correspondence address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4914.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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SUITE 400
MCLEAN, VA 22102

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In re Application of	:	
West et al.	:	
Application No. 10/853,767	:	DECISION ON PETITION
Filed: May 26, 2004	:	TO WITHDRAW
Attorney Docket No. 544092000800	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 28, 2005.

The request is **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 November 3, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the correspondence address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4914.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :

FLACH, Bjorn et al. :
Application No. 10/853,768 :
Filed: October 14, 2004 :
Attorney Docket No. **543822006700** :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 13, 2007.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Deborah S. Gladstein on behalf of all attorneys of record who are associated. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **BJORN FLACH**
AV. 1 DE MAIO, 801
VILA DO CONDO 4485-629
PORTUGAL

cc: **ESCHWEILER & ASSOCIATES, LLC**
NATIONAL CITY BANK BUILDING
629 EUCLID AVENUE, SUITE 1000
CLEVELAND, OH 44114

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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SEP 24 2008

In re Application of West et al. Application No. 10/853,769 Filed: May 26, 2004 Attorney Docket No. 544092001000	: : : : : :	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 28, 2005.

The request is **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 November 3, 2005. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the correspondence address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4914.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 300
MCLEAN VA 22102

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MAR 13 2007

OFFICE OF PETITIONS

In re Application of
Jon K. West, et al.
Application No. 10/853,770
Filed: May 26, 2004
Attorney Docket No. 544092001100

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed September 28, 2005.

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 November 15, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the 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: HELLER EHRMAN LLP
1717 RHODE ISLAND AVE, NW
WASHINGTON, DC 20036-3001

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/853,770	05/26/2004	Jon K. West	

CONFIRMATION NO. 4512

OC000000022852989

OC000000022852989

61263
PROSKAUER ROSE LLP
1001 PENNSYLVANIA AVE, N.W.,
SUITE 400 SOUTH
WASHINGTON, DC 20004

Date Mailed: 03/12/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/15/2006.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199

ATTORNEY/APPLICANT COPY

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/853,770	05/26/2004	Jon K. West	544092001100

CONFIRMATION NO. 4512

OC000000022852978

OC000000022852978

25227
MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD
SUITE 300
MCLEAN, VA 22102

Date Mailed: 03/12/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/15/2006.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
NEW ATTORNEY/AGENT COPY

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Morrison & Foerster, LLP
1650 Tysons Boulevard
Suite 300
McLean, VA 22102

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JUL 3 1 2009

OFFICE OF PETITIONS

In re Application of	:	
Jon K. West et al.	:	
Application No. 10/853,770	:	DECISION ON PETITION
Filed: May 26, 2004	:	TO WITHDRAW
Attorney Docket No. 544092001100	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 28, 2005.

The request is **moot because a revocation of power of attorney has been filed**.

A review of the file record indicates that the power of attorney to Alex Chartove and all attorneys/agents of record has been revoked by the assignee of the patent application on November 15, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below listed until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Proskauer Rose LLP
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, DC 20004

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Ballard Spahr LLP
SUITE 1000
999 PEACHTREE STREET
ATLANTA, GA 30309-3915

Mail Date: 04/21/2010

Applicant	: Roger E. Smith	: DECISION ON REQUEST FOR
Patent Number	: 7597936	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/853,808	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **900** 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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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/853,824	05/26/2004	1614	493	04-07US	6	19	4

CONFIRMATION NO. 6137

UPDATED FILING RECEIPT

OC000000014055832

36814
PAUL G. LUNN, ESQ. NASTECH PHARMACEUTICAL COMPANY INC.
3450 MONTE VILLA PARKWAY
BOTHELL, WA 98021-8906

Date Mailed: 10/12/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Henry C. Lin, Manhattan Beach, CA;

Assignment For Published Patent Application

CEDARS-SINAI MEDICAL CENTER, Los Angeles, CA

Power of Attorney:

Paul Lunn--32743

Domestic Priority data as claimed by applicant

This application is a CON of 10/810,020 03/26/2004
which is a DIV of 09/837,797 04/17/2001
which is a CIP of 09/374,142 08/11/1999
and is a CIP of 09/374,143 08/11/1999 PAT 6,562,629
and is a CIP of 09/546,119 04/10/2000 PAT 6,558,708
which is a CIP of 09/420,046 10/18/1999 ABN
which is a CIP of 09/359,583 07/22/1999 ABN
which is a CON of 08/832,307 04/03/1997 PAT 5,977,175
which is a CON of 08/442,843 05/17/1995 ABN

Foreign Applications

UNITED STATES OF AMERICA PCT/US01/11238 04/07/2001
UNITED STATES OF AMERICA PCT/US00/22168 08/11/2000
UNITED STATES OF AMERICA PCT/US00/22030 08/11/2000

If Required, Foreign Filing License Granted: 07/21/2004

The number of your priority application, to be used for filing abroad under the Paris Convention is,
US10/853,824

Projected Publication Date: 01/20/2005

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Methods for manipulating upper gastrointestinal transit, blood flow, and satiety, and for treating visceral hyperalgesia

Preliminary Class

514

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy

order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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NASTECH PHARMACEUTICAL COMPANY INC
3450 MONTE VILLA PARKWAY
BOTHELL, WA 98021-8906

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JAN 31 2006

OFFICE OF PETITIONS

In re Application of	:	
Henry C. Lin	:	
Application No. 10/853,824	:	ON PETITION
Filed: May 26, 2004	:	
Attorney Docket No. 04-07US	:	

This is a decision on the petition, filed October 19, 2005, under 37 CFR 1.182 requesting the withdrawal of previously filed terminal disclaimers. The petition fee has been received.

The petition is granted.

Petitioner asserts that the Terminal Disclaimers filed on September 14, 2005 in this application are moot in view of subsequent action in the prosecution of the application. Petitioner explains that the terminal disclaimers were necessary to overcome the obviousness type double patenting rejection of claim 19; however, these terminal disclaimers are moot upon cancellation of claim 19.

As the examiner has concurred, the request can be favorably considered.

The application is being referred to Technology Center Art Unit 1645 for further processing consistent with this decision.

Telephone inquiries related to this decision may 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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WALL & TONG, LLP/
ALCATEL-LUCENT USA INC.
25 James Way
Eatontown, NJ 07724

Mail Date: 08/04/2010

Applicant	: Jean G. Jennen	: DECISION ON REQUEST FOR
Patent Number	: 7650081	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/853,825	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1549** 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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NALCO COMPANY
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NAPERVILLE IL 60563-1198

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OFFICE OF PETITIONS

In re Application of	:
Peter A. Dimas et al	:
Application No. 10/853,840	: DECISION GRANTING PETITION
Filed: May 26, 2004	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 7747 P1	:

This is a decision on the petition under 37 CFR 1.137(b), filed May 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 an amendment (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Non-final Rejection of October 31, 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 1724

Karen Creasy
Petitions Examiner
Office of Petitions

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JUL 29 2004

DCM

In re Application of Jiten CHATTERJI, et al. Serial Number: 10/853,878 Filed: May 26, 2004 For: FOAMED AND NON-FOAMED CEMENT COMPOSITIONS INCLUDING SILANE TREATED SILICA AND METHODS	:	PETITION UNDER M.P.E.P.708.02 IV

This is in response to the petition filed May 26, 2004, requesting that the above-identified application be granted Special Status under Section 708.02 IV of the MPEP and 37 CFR 1.102(c) **(no fee required)**.

The request for Special Status considered under Section 708.02 IV of the MPEP is granted because criteria under 37 CFR 1.102(c) has been met.

Accordingly the petition is **GRANTED.**

Marian C Knode

Marian C. Knode, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

Robert A. Kent
HALLIBURTON ENERGY SERVICES
P.O. BOX 1431
DUNCAN OK 73536-0440

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CRAIG W. RODDY
HALLIBURTON ENERGY SERVICES
P.O. BOX 1431
DUNCAN, OK 73536-0440

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Jiten Chatterji et al :
Application No. 10/853,878 :
Filed: May 26, 2004 :
Attorney Docket No. HES 2003-IP-012301U1

This is a decision on the petition, filed June 9, 2005 which is being treated as a petition, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on May 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 Irvin Dingle at (571) 272-3210.

This matter will be referred to Technology Center AU 3672 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions
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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ROBERT A. KENT
P.O. BOX 1431
DUNCAN OK 73536

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MAR 2 3 2009

OFFICE OF PETITIONS

In re Application of	:	
Weaver et al.	:	
Application No. 10/853,879	:	ON PETITION
Filed: May 26, 2004	:	
Attorney Docket No. 96.0003U1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 1, 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 Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS), (2) the petition fee, and (3) a proper statement of unintentional delay.

35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned for failure to pay the issue fee. Therefore, the filing of a continuing application without payment of the issue fee or any outstanding balance thereof is not an acceptable reply in an application abandoned for failure to pay the issue fee or any portion thereof. Accordingly, the $1510.00 issue fee and the $300.00 publication fee required by the Notice of Allowance will be charged to petitioner's deposit account as authorized.

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.[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 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

This matter is being referred to Technology Center AU 1796 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition

Liana Walsh
Petitions Examiner
Office of Petitions

cc: BAKER BOTTS LLP
910 LOUISIANA STREET
HOUSTON, TX 77002-4995

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OFFICE OF PETITIONS

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:
Ponzoni, et al.	: LETTER REGARDING PTA
Application No. 10/853,895	:
Filed: May 26, 2004	:
Atty. Dkt. No.: 50538/003001	:

This letter is in response to the "REQUEST FOR RECONSIDEARTION OF PATENT TERM ADJUSTMENT," filed June 25, 2008. The Office thanks applicants for their good faith and candor in bringing this to our attention.

The Determination of Patent Term Adjustment mailed April 16, 2008 indicated that the above-identified application was entitled to a patent term adjustment ("PTA") of 218 days. Applicants indicate that this adjustment appears longer than appropriate and request recalculation of the adjustment.

The correct Patent Term Adjustment ("PTA") at the time of the allowance is 134 days.

The adjustment of 308 days and the reduction of 90 days has been reviewed and does not contain any errors.

However, the Office neglected to assess a reduction in connection with the RCE filed February 1, 2008. In accordance with 37 CFR 1.704(b), the reduction commenced November 10, 2007, the day after the date that is three months after the final Office action was mailed, and ended February 1, 2008, the date that the RCE was filed.

Accordingly, as of the time of allowance, the application is entitled to an adjustment of 134 days (adjustments totalling 308 days less reductions of 174 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 with this matter.

The patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

This application is being forward to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the Alesia M. Brown at (571) 272-3205.

Kery A Fries

Kery Fries
Senior Patent Attorney
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation

Day : Tuesday
Date: 12/16/2008

PALM INTRANET

Time: 08:16:52

PTA Calculations for Application: 10/853895			
Application Filing Date:	05/26/2004	PTO Delay (PTO):	308
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	90
Post-Issue Petitions:	0	Total PTA (days):	134
PTO Delay Adjustment:	-84		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
77	12/16/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		84	
64	04/16/2008	MAIL NOTICE OF ALLOWANCE			
63	04/11/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
62	04/11/2008	ISSUE REVISION COMPLETED			
61	04/11/2008	DOCUMENT VERIFICATION			
60	04/11/2008	EXAMINER'S AMENDMENT COMMUNICATION			
59	04/11/2008	NOTICE OF ALLOWABILITY			
55	02/01/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
54	03/10/2008	EMAIL NOTIFICATION			
53	03/10/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
52	03/04/2008	CORRESPONDENCE ADDRESS CHANGE			
51	02/01/2008	REFERENCE CAPTURE ON IDS			
50	02/01/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	02/13/2008	DATE FORWARDED TO EXAMINER			
48	02/01/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
47	02/13/2008	DATE FORWARDED TO EXAMINER			
46	02/01/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
45	02/13/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
44	02/01/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
43	02/01/2008	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
42	02/01/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
41	08/09/2007	MAIL FINAL REJECTION (PTOL - 326)			
40	08/06/2007	FINAL REJECTION			
38	06/08/2007	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
37	04/25/2007	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
36	06/04/2007	DATE FORWARDED TO EXAMINER			
35	04/25/2007	RESPONSE AFTER NON-FINAL ACTION		90	33
34	04/28/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	10/25/2006	MAIL NON-FINAL REJECTION			
32	10/16/2006	NON-FINAL REJECTION			
31	12/20/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
30	11/15/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	09/12/2006	DATE FORWARDED TO EXAMINER			
28	08/30/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
27	08/30/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	05/30/2006	MAIL RESTRICTION REQUIREMENT	308		-1
25	05/25/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
24.7	12/20/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	12/20/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	11/15/2004	REFERENCE CAPTURE ON IDS			
22.7	11/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	11/15/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	09/27/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	09/27/2004	CASE DOCKETED TO EXAMINER IN GAU			
19	09/16/2004	APPLICATION RETURN FROM OIPE			
18	09/16/2004	APPLICATION RETURN TO OIPE			
17	09/16/2004	APPLICATION RETURN FROM OIPE			
16	09/16/2004	APPLICATION IS NOW COMPLETE			

15	09/13/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
14	09/13/2004	APPLICATION RETURN TO OIPE			
13	09/13/2004	APPLICATION DISPATCHED FROM OIPE			
12	09/13/2004	APPLICATION IS NOW COMPLETE			
11	08/18/2004	ADDITIONAL APPLICATION FILING FEES			
10	08/18/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
9	08/18/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
8	07/22/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
7	07/08/2004	CLEARED BY L&R (LARS)			
6	06/30/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
5	06/30/2004	CASE CLASSIFIED BY OIPE			
4	06/09/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
3	06/08/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/26/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	05/26/2004	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

In re Application of	:	
James M. Lipton	:	DECISION ON REQUEST
Application No. 10/853,902	:	TO WITHDRAW FROM
Filed: May 25, 2004	:	RECORD
Attorney Docket No. 54275.8009.US01	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 CFR § 10.40 filed March 31, 2006.

The request is **APPROVED**.

A review of the file record indicates that Joseph P. Hamilton and the attorneys/agents associated with Customer No. 34055: (1) do not have power of attorney in this patent application; but (2) have been employed or otherwise engaged in the proceedings in this patent application. In view of the present decision, Joseph P. Hamilton and the attorneys/agents associated with Customer No. 34055 have been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

The request to change the correspondence address of record has been accepted. All future communications from the Office will be directed to the address below until otherwise properly notified by the applicant.

This application file is being referred to Technology Center Art Unit 1655 for examination in due course.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Conferee:

cc: Zengen Inc.
7049 Owensmouth Avenue
Suite 112
Canoga Park, CA 91303

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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MAY 10 2010

OFFICE OF PETITIONS

ROBERT E. KLEVE
1103-24TH AVE S.
GRAND FORKS ND 58201

In re Application of
Kevin J. Pierce, et al.
Application No. 10/853,910
Filed: May 26, 2004

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 1, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment (37 CFR 1.21) mailed September 30, 2008, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 1, 2008. The Notice of Abandonment was mailed May 6, 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

The amendment document filed herewith petition is considered non-compliant because it failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following is required:

Amendment to the claims: A complete listing of all claims must be listed in the amendment with proper status identifiers for every claim. For further explanation of the amendment format required by 37 CFR 1.121, see MPEP §714.

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) 272-2991.

Terri Johnson
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

Bingham McCutchen LLP
Suite 1800
Three Embarcadero Center
San Francisco, CA 94111-4067

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OFFICE OF PETITIONS

In re Application of :
Thorpe : DECISION ON PETITION
Application No. 10/853,918 :
Filed: May 26, 2004 :
Docket No.: 703166-2001 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed December 6, 2005.

This application was held abandoned June 17, 2005 for failure to timely submit a proper reply to the Office communication mailed May 16, 2005. Notice of Abandonment was mailed November 25, 2005.

Petitioner asserts non-receipt of the Office communication May 16, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. *See*, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Office records indicate the Office communication was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office.

In support of the petition, petitioners have provided a copy of the docket record where the Office communication would have been entered had it been received along with a statement from petitioners that a search of the docket record and file jacket indicated that the Office communication was not received.

In view thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center 3700 for re-mailing of the Office communication.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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WOOD, HERRON & EVANS, L.L.P.
2700 Carew Tower
441 Vine St.
Cincinnati, OH 45202

Mail Date: 04/21/2010

Applicant	: Delos M. Cosgrove	: DECISION ON REQUEST FOR
Patent Number	: 7645285	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/853,928	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1160** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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LEE & HAYES, PLLC
601 W. RIVERSIDE AVENUE, SUITE 1400
SPOKANE, WA 99201

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In re Application of	:
Zheng ZHANG, et *al.*	:
Application No. 10/853,933	: DECISION GRANTING PETITION
Filed: May 25, 2004	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **MS1-1958US**	:

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 17, 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 February 11, 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 2443 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

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JJGJr: 01-06

Paper No: __

THOMAS S. KEATY
KEATY PROFESSIONAL LAW CORPORATION
2140 WORLD TRADE CENTER
2 CANAL STREET
NEW ORLEANS LA 70130

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JAN 1 1 2006
OFFICE OF PETITIONS

In re Application of	:	
Brennan	:	
Application No. 10/853,937	:	ON PETITION
Filed: 30 December, 2003	:	
Attorney Docket No. B03-0208	:	

This is a decision on the papers filed as request for correction of filing date on 25 October and 9 December, 2005, and considered as petitions under 37 C.F.R. §1.53, to obtain a filing date of 30 December, 2003, for the instant application, Application No. 10/853,937.

For the reasons set forth below, the petition is **GRANTED**.

NOTE: **Petitioner's attention is drawn to the application number set forth above, to wit: *Application No.10/853,937*,[1] and it is noted that all future filings by Petitioner in regard to the instant matter shall be filed under and with reference to that application number.**

BACKGROUND

After this application was deposited on 30 December 2003:

[1] The undersigned has been informed that an in-Office processing error temporarily assigned to the instant file Application No. 10/747,647.which error has been corrected and hereafter the instant application will bear Application No. 10/853,937 .

- it appears that the Office mailed Petitioner/Applicant's date-stamped receipt card with an incorrect application number (to wit: 10/747,647 (the '647 application)), nonetheless acknowledging receipt on 30 December, 2003, of the application;

- on 26 August, 2005, the Office (through OIPE) mailed a Notice of Missing Parts, indicating, *inter alia*, that the application had been deposited without a fully executed oath/declaration, however, while the Office set forth therein the instant Application No. 10/853,937, the Office indicated a filing date of 26 May, 2004–and OIPE set a two- (2-) month period for reply;

- on 25 October, 2005, Petitioner filed via FAX the first of the two instant petitions seeking correction of the filing date, and on 31 October, 2005 (over certificates of mailing of 24 October 21005), Petitioner filed the reply to the Notice of Missing Parts;

- as noted above, Petitioner filed the instant petitions on 25 October and 9 December, 2005, with, *inter alia*, a copy of the date-stamped ("123003") receipt card (see: MPEP §503[2])–albeit with the '647 application number initially and incorrectly assigned by the

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[2] MPEP §503 provides in pertinent part:

§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a

Office–and a request for a corrected filing date of 30 December, 2003, for the instant application, Application No. 10/853,937.

- a review of Office records indicates that an in-Office error temporarily assigned incorrect application numbers and filing dates to this application and another application,[3] however, the error as to the '647 application previously has been corrected and its filing date confirmed as 26 May, 2004, while the instant application is confirmed with Application No. 10/853,937.

Analysis

A search of the official file reveals that:

- on 30 December, 2003, Petitioner deposited the instant application;
- the date-stamped receipt card, albeit bearing an incorrect application number, acknowledges receipt of the application on 30 December, 2003, and the Office has not, as of this writing, indicated that the instant application was incomplete and not due a filing date.

Because Petitioner's receipt card adequately itemized the contents of the application on the receipt card and those contents were acknowledged by the Office as received, it is concluded that the instant application was deposited with the Office on 30 December, 2003, and subsequently temporarily was confused by the Office with the '647 application and so did not receive a proper filing date until this writing.

Accordingly, the instant application is entitled to a filing date of 30 December, 2003.

The Notice mailed on 25 August, 2005, was sent with an erroneous filing date and is hereby vacated to the extent that it stated that the application was filed on 26 May, 2004.

CONCLUSION

The petition is **granted** and the petition fee waived.

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particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

[3] The undersigned has been informed that an in-Office processing error temporarily assigned to the instant file Application No. 10/747,647 with a filing date of 26 May, 2004.which error has been corrected and hereafter the instant application will bear Application No. 10/853,937 and the filing date is being corrected hereby. The

This application is released to OIPE for further processing with a filing date of 30 December, 2003, for the entire application with pages 1 - 11 of the specification (description, claims and abstract) and 3 sheets of drawings–Fig. 1, Figs 2 and 3, and Figs. 4 - 6–using pages 1 - 11 of specification (description, claims and abstract) and 3 sheets of drawings (Fig. 1, Figs 2 and 3, and Figs. 4 - 6), as described in the specification deposited on 30 December, 2002.

Further, OIPE is directed to correct Office records and provide to Petitioner a corrected filing receipt setting forth a filing date of 30 December, 2003, and reflecting therein that pages 1 - 11 of the specification (description, claims and abstract) and 3 sheets of drawings (Fig. 1, Figs 2 and 3, and Figs. 4 - 6) were present on filing.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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OFFICE OF PETITIONS

LEGAL DEPARTMENT (M-495)
PO BOX 1926
SPARTANBURG SC 29304

In re Application of	:	
Shulong Li	:	
Application No. 10/853,938	:	ON PETITION
Filed: May 26, 2004	:	
Attorney Docket No. 5774	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed June 30, 2009.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed February 25, 2009. This Notice set a statutory period for reply of three months for issue fee transmittal. No issue fee having been received, the application became abandoned on May 26, 2009. A Notice of Abandonment was mailed on June 24, 2009.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of the issue fee.

The application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

WESTERN DIGITAL TECHNOLOGIES, INC.
ATTN: LESLEY NING
20511 LAKE FOREST DR.
E-118G
LAKE FOREST CA 92630

In re Patent No. 7498062	:	
Issue Date: 03/03/2009	:	
Application Number: 10/853953	:	ON PETITION
Filing or 371(c) Date: 05/26/2004	:	
Attorney Docket Number: M3416	:	

This is a decision on the petition filed February 19, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3231. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The fee for the Certificate of Correction ($100.00) will be charged to counsel's deposit account as authorized in the subject petition.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
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WWW.USPTO.GOV

Tyco Healthcare Group, LP
Intellectual Property Department Docketing
15 Hampshire Drive
Mansfield MA 02048

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OFFICE OF PETITIONS

In re Application of
Jeffrey Price et al.
Application No. 10/853,967
Filing Date: May 25, 2004
Attorney Docket Number:
1070US
Title: SAFETY INTERLOCK SYSTEM FOR AN ENTERAL FEEDING PUMP

DECISION ON PETITION PURSUANT TO 37 C.F.R. §§ 1.78(A)(3) AND (A)(6)

Background

This is a decision on the petition filed May 11, 2007 in application No. 11/219,974 for correcting the priority claim in application No. 10/853,967. Since it is the priority claim in 10/853,967 which requires correction, the petition has been move to that application. The present petition has been made in the alternative under 37 CFR 1.137, 1.182, and 1.183. The petition has been reviewed and the grounds suggested by applicants are not considered to be appropriate because there is nothing to waive under 37 CFR 1.183 since the remedy is specifically covered by the rules. There is nothing to suspend under 37 CFR 1.82 since the rules allow applicants to make the correction to the benefit claim. There is no application that needs to be revived under 37 CFR 1.137 in order for the correction in benefit claim to be made. Accordingly, this petition has been interpreted as a petition under 37 CFR 1.78(a)(3) and (a)(6) as requested by applicants in section (d) of the petition.

Decision

The following is a decision on the petition, as interpreted, under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed May 11, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) 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.

The petition fails to satisfy item (3) above.

The surcharge set forth in § 1.17(t) is $1,410. This fee has been charged to applicants' deposit account in accordance with section (d) of the petition. Applicants are required to submit 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 is unintentional.

Conclusion

Telephone inquiries regarding this decision should be directed to Paul Shanoski at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Anthony Knight
Supervisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

Tyco Healthcare Group, LP
Intellectual Property Department Docketing
15 Hampshire Drive
Mansfield MA 02048

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OFFICE OF PETITIONS

In re Application of	:	
Jeffrey Price et al.	:	
Application No. 10/853,967	:	DECISION ON TWO RENEWED
Filing Date: May 25, 2004	:	PETITIONS PURSUANT TO
Attorney Docket Number:	:	37 C.F.R. §§ 1.78(A)(3), (A)(6), AND
1070US	:	1.182
Title: SAFETY INTERLOCK SYSTEM FOR	:	
AN ENTERAL FEEDING PUMP	:	

Background

This is a decision on the renewed petition filed February 28, 2008, for correcting the priority claim in this application, pursuant to 37 C.F.R. §§ 1.78(a)(3) and (a)(6). This is also a decision on the petition filed March 25, 2008, pursuant to 37 C.F.R. § 1.182, requesting expedited handling of the renewed petition for correction of the priority claim.

Decision

The petition pursuant to 37 C.F.R. § 1.182 is **GRANTED**. The renewed petition for correction of the priority claim will receive expedited handling. Receipt of the associated petition fee is acknowledged.

The renewed petition pursuant to 37 C.F.R. §§ 1.78(a)(3) and (a)(6) is **DISMISSED**.

On May 11, 2007, Petitioner submitted three petitions pursuant to 37 C.F.R. §§ 1.137(b), 1.182, and 1.183. Petitioner requested that the Office accept an unintentionally delayed claim under 35 U.S.C. § 365(c) in this abandoned application, for the benefit of priority to a prior-filed international application.

The Office interpreted this petition as a petition under 37 C.F.R. §§ 1.78(a)(3) and (a)(6), as requested by applicants in section (d) of the submission. A decision was mailed on February 7,

2008, which indicated that the third requirement of 37 C.F.R. §§ 1.78(a)(3) and (a)(6) had not been met, and that

> Applicants are required to submit 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 is unintentional.

With this renewed petition, Petitioner has included the proper statement of unintentional delay.

The Office has since reconsidered this position.

The surcharge that is associated with the request for the acceptance of an unintentionally delayed claim for priority will be refunded to Petitioner's Deposit Account in due course.

Petitioner will not be able to achieve his objective via the filing of the proper statement of unintentional delay, as required by 37 C.F.R. §§ 1.78(a)(3)(iii) and (a)(6)(iii). Instead, **Petitioner will need to file a petition pursuant to 37 C.F.R. § 1.137(b), as well as a petition pursuant to 37 C.F.R. § 1.182, requesting the conversion of this application from an application that was filed under 35 U.S.C. § 111 to an application under 35 U.S.C. § 371.**

Conclusion

Any subsequent submission concerning this matter should be directed to the attention of the Office of PCT Legal Administration, and may be submitted by mail[1], hand-delivery[2], or facsimile[3]. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web[4].

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included – adding anything else to the address will delay the delivery of the response to the deciding official.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Anthony Knight
Supervisor
Office of Petitions

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1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300- please note this is a central facsimile number.
4 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

UNITED STATES PATENT AND TRADEMARK OFFICE

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WWW.USPTO.GOV

Tyco Healthcare Group, LP
Intellectual Property Department Docketing
15 Hampshire Drive
Mansfield MA 02048

MAILED

APR 17 2009

OFFICE OF PETITIONS

In re Application of :
Jeffrey Price et al. :
Application No. 10/853,967 :
Filing Date: May 25, 2004 :
Attorney Docket Number: :
1070US :
Title: SAFETY INTERLOCK SYSTEM FOR :
AN ENTERAL FEEDING PUMP :

DECISION ON PETITION

This is a decision on the petition filed October 15, 2008, filed to correct the priority claim in application No. 10/853,967.

A review of the decision mailed March 31, 2008, has been made and the decision is hereby **VACATED**. Any inconvenience or delay to petitioner is regretted.

This petition has been interpreted as a petition under 37 CFR 1.78(a)(3) and (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.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was

filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition satisfies all of the above requirements, hence the petition is granted.

Conclusion

Telephone inquiries regarding this decision should be directed to Paul Shanoski at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Anthony Knight
Supervisor
Office of Petitions

Attachment: Corrected Filing Receipt

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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
10/853,967	05/25/2004	3763	856	1070US	20	4

CONFIRMATION NO. 6453

CORRECTED FILING RECEIPT

Tyco Healthcare Group, LP
Intellectual Property Department Docketing
15 Hampshire Drive
Mansfield, MA 02048

OC000000035483752

Date Mailed: 04/14/2009

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)

Jeffrey Price, Wildwood, MO;
Glenn G. Fournie, Smithton, IL;
Joseph A. Hudson, O'Fallon, MO;
Ricky A. Sisk, Washington, MO;
Richard J. Naumann, Chesterfield, MO;

Assignment For Published Patent Application

SHERWOOD SERVICES, AG.

Power of Attorney:

Peter Gilster--25337
Donald Fitzpatrick--25553
Linda Lewis--31212
Glenn Robbins II--33275
Ari Bai--38726
Randy Canis--44584
J. Ashcraft--51024

Domestic Priority data as claimed by applicant

This application is a CON of PCT/US03/10713 04/07/2003
which claims benefit of 60/413,710 09/26/2002

Foreign Applications

If Required, Foreign Filing License Granted: 07/22/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/853,967**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
Title

Safety interlock system for an enteral feeding pump

Preliminary Class

604

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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Paper No.

MAILED

MAY 20 2010

OFFICE OF PETITIONS

BEVER HOFFMAN & HARMS, LLP
901 Campisi Way
Suite 370
Campbell CA 95008

In re Application of	:	
Chou et al.	:	
Application No. 10/854,004	:	DECISION ON PETITION
Filing Date: May 25, 2004	:	PURSUANT TO
Attorney Docket No.: SUP-062	:	37 C.F.R. § 1.78(A)(3)
(STEI-P005)	:	
Title: EXTENDED SECURE-DIGITAL	:	
(SD) DEVICES AND HOSTS	:	

This is a decision on the "PETITION TO CLAIM BENEIFT UNDER 35 U.S.C. 120 OF PRIOR FILED NON-PROVISIONAL APPLICATION(S) (37 C.F.R. § 1.78(a)(2)," filed on March 17, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed non-provisional application 10/708,634, set forth in an amendment to the specification that was filed concurrently with this petition. This petition is being treated as a petition pursuant to 37 C.F.R. § 1.78(a)(3).

This petition pursuant to 37 C.F.R. § 1.78(a)(3) is **GRANTED**.

A petition for acceptance of a claim for late priority pursuant to 37 C.F.R. § 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 C.F.R. § 1.78(a)(2)(ii). In addition, the petition pursuant to 37 C.F.R. § 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i) of the prior-filed applications, unless previously

submitted;

(2) the surcharge set forth in 37 C.F.R. § 1.17(t), and;

(3) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

37 C.F.R. § 1.78(a)(3)(iii) requires a statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. § 1.78 and the date the claim was filed was unintentional. Since the statement contained in this petition varies slightly from the language required by 37 C.F.R. § 1.78(a)(3)(iii), the statement contained in this petition is being construed as the statement required by 37 C.F.R. § 1.78(a)(3)(iii), and Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.

Petitioner has included the petition fee, an amendment to the specification, and a statement that is being construed as the proper statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority pursuant to 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of this petition to accept the delayed benefit claim to the prior-filed application pursuant to 37 C.F.R. § 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 C.F.R. §§ 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.

This application is being forwarded to Technology Center Art Unit 2182 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.[1]

Chris Bottorff
Supervisor
Office of Petitions

Encl. Corrected Filing Receipt

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/854,004	05/25/2004	2182	2230	SUP-062 (STEI-P005)	82	7

CONFIRMATION NO. 7063

CORRECTED FILING RECEIPT

22888
BEVER HOFFMAN & HARMS, LLP
901 Campisi Way
Suite 370
Campbell, CA 95008

OC000000041407438

Date Mailed: 05/14/2010

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)

Horng-Yee Chou, Palo Alto, CA;
Szu-Kuang Chou, Cupertino, CA;
Kuang-Yu Wang, Saratoga, CA;
I-Kang Yu, Palo Alto, CA;

Assignment For Published Patent Application

Super Talent Electronics Inc., San Jose, CA

Power of Attorney: The patent practitioners associated with Customer Number 22888

Domestic Priority data as claimed by applicant

This application is a CIP of 10/708,634 03/16/2004 PAT 7,069,369
which is a CIP of 10/708,172 02/12/2004 PAT 7,021,971

Foreign Applications

If Required, Foreign Filing License Granted: 07/22/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/854,004**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

EXTENDED SECURE-DIGITAL (SD) DEVICES AND HOSTS

Preliminary Class

710

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

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The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign 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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TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ
15 HAMPSHIRE STREET
MANSFIELD, MA 02048

MAILED

MAY 08 2009

OFFICE OF PETITIONS

In re Application of	:	
Robert B. GAINES, et al.	:	
Application No. 10/854,008	:	DECISION DISMISSING PETITION
Filed: May 25, 2004	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. **M-1132 / TYCK 1132**	:	

This is a decision on the petition under 37 CFR 1.313(a), filed May 8, 2009, 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 and Fee(s) Due was mailed on February 10, 2009, with the issue fee being due on or before May 11, 2009. The petition states that the issue fee in this case has not 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) and 1308.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-7253.

The matter is being referred to Technology Center AU 3763 for appropriate processing of the RCE filed May 8, 2009, and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner,Office of Petitions

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Pegasystems Inc./Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604

Mail Date: 04/20/2010

Applicant	: Alan Trefler	: DECISION ON REQUEST FOR
Patent Number	: 7665063	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/854,017	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **773** 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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Juan Carlos A. Marquez
c/o Stites & Harbison PLLC
1199 North Fairfax Street
Suite 900
Alexandria, VA 22314-1437

Mail Date: 04/21/2010

Applicant	: Yoshinobu Kohara	: DECISION ON REQUEST FOR
Patent Number	: 7666662	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/854,018	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **876** 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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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 05/17/2010

Applicant	: Bruce A. Christie	: DECISION ON REQUEST FOR
Patent Number	: 7628810	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/854,033	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1470** 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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PATENT LEGAL STAFF
EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER, NY 14650-2201

MAIL

MAR 22 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re application of:
Qiang Luo
Application No. 10/854,056
Filed: May 26, 2004
For: METHOD OF ESTIMATING ELECTRICAL CROSS TALK IN AN ARRAY OF IMAGING CELLS

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney/agent of record filed on November 12, 2004.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Attorney requesting withdrawal is not of record.

Accordingly, the request is **DENIED.**

All future communications from the Office will continue to be directed to the address listed above until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

UNITED STATES PATENT AND TRADEMARK OFFICE

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LOWENSTEIN SANDLER PC
65 LIVINGSTON AVENUE
ROSELAND, NJ 07068

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APR 0 2 2009

OFFICE OF PETITIONS

ON PETITION

In re Application of
Guthrie et al.
Application No. 10/854,063
Filed: May 26, 2004
Attorney Docket No. 21055-12

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 15, 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 7, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is June 8, 2008. A Notice of Abandonment was mailed November 6, 2008.

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 an amendment, including a terminal disclaimer and fee of $140, (2) the petition fee of $1,620, 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 1623 for appropriate action in the normal course of business on the reply received December 15, 2008.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

CARR & FERRELL LLP
2200 GENG ROAD
PALO ALTO, CA 94303

In re Application of	:	
Dipesh H. Shah	:	
Application No. 10/854,082	:	DECISION ON PETITION
Filed: May 24, 2004	:	TO WITHDRAW
For: SERVICE GRANT FOR GSM WIRELESS NETWORKS BASED ON SIGNAL STRENGTH	:	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 22, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to the attorneys associated with Customer No. **22830**, in addition to Colleen M. Raphael, has been revoked by the assignee of the patent application on April 18, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant/assignee or the current attorneys of record.

This application is being referred to Technology Center AU 2617 for the mailing of the Final Rejection on May 26, 2006.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

Conferee:

cc:

PARKS KNOWLTON – C001
1117 PERIMETER CENTER WEST
SUITE W-307
ATLANTA, GA 30338

OIPE
FEB 2 3 2005
& TRADEMARK OFFICE

DFW
Pet. Dec.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	E. Altheimer et al.	Attorney Docket No.:	NILE119569
Application No:	10/854,106	Group Art Unit:	1731
Filed:	May 26, 2004	Confirmation No.:	6564
Assignees:	Nile Fiber Pulp & Paper, Inc. and the Washington State University Research Foundation		
Title:	ARUNDO DONAX COMPOSITE PANEL		

Approved
Jacqueline M. Stone, Director
Technology Center 1700
5/26/05

REQUEST FOR PERMISSION TO WITHDRAW AS ATTORNEYS OF RECORD UNDER 37 CFR § 1.36 AND § 10.40

February 17, 2005

TO THE COMMISSIONER FOR PATENTS:

REQUEST FOR WITHDRAWAL AND REASON THEREFOR

Pursuant to 37 C.F.R. § 1.36 and 37 C.F.R. § 10.40(c), the undersigned hereby requests permission to withdraw as attorneys of record in the above-referenced patent application because of nonpayment by the applicants for an unreasonable period of time 37 C.F.R. § 10.40(c)(1)(vi).

ASSIGNMENT OF APPLICATION

The above-identified patent application has been assigned by Ernett Altheimer to Nile Fiber Pulp & Paper, Inc. as evidenced by an assignment recorded at Reel 012081, Frame 0184 and by Michael Wolcott to the Washington State University Research Foundation by an assignment recorded at Reel 011612, Frame 0564.

ALLOWANCE OF TIME FOR ASSIGNEES TO ACT

In accordance with 37 CFR § 10.40(a), the undersigned have taken reasonable steps to avoid foreseeable prejudice to the rights of the assignees. The status of the patent application is as follows: Awaiting first Office Action. The assignees have sufficient time to seek and employ another practitioner for this patent application before any additional action is required.

ASSIGNEES NOTIFIED OF WITHDRAWAL

By way of correspondence dated December 2, 2004, assignee Nile Fiber Pulp & Paper, Inc. was informed of the withdrawal of Christensen O'Connor Johnson Kindness^{PLLC} as attorneys of record for this patent application. By way of correspondence dated February 1, 2005, assignee Washington State University Research Foundation was informed of the withdrawal of Christensen O'Connor Johnson Kindness^{PLLC} as attorneys of record for this patent application.

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

Pet. Dec.

Due notice has been given to the assignees of the undersigned's withdrawal from employment and of the filing of this paper with the U.S. Patent and Trademark Office.

PAPERS AND PROPERTY DELIVERED TO ASSIGNEE

During the course of prosecution, the undersigned has provided assignees with all papers and property to which the assignees are entitled concerning the prosecution of the above-identified patent application. The undersigned has also notified the assignees of any responses that may be due and the time frame within which the assignees must respond.

LAST KNOWN MAILING ADDRESS OF ASSIGNEES

The last known mailing address of the assignee Nile Fiber Pulp & Paper, Inc. is Suite 200, 400 - 112th Avenue NE, Bellevue, Washington 98004. The last know mailing address of the assignee Washington State University Research Foundation is 1610 NE Eastgate Blvd., Pullman, WA 99163. Future correspondence should be mailed to assignees at the addresses listed above.

WITHDRAWAL OF ATTORNEYS

This Request for Permission to Withdraw As Attorneys of Record is being signed by George E. Renzoni, Ph.D. on behalf of himself and all attorneys and agents who are members of, employed by, or otherwise associated with the firm of Christensen O'Connor Johnson Kindness[PLLC], Customer No. 26389, and explicitly the attorneys of record named in the power of attorney on file in this matter.

A copy of this Request is being forwarded to assignees at the mailing addresses set forth above.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS[PLLC]

George E. Renzoni

George E. Renzoni, Ph.D.
Registration No. 37,919
Direct Dial No. 206.695.1755

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: February 17, 2005

GER:md

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS[PLLC]
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office

on March 11, 2005.
Date

William H. Dippert
William H. Dippert
Registration No. 26,723

REED SMITH LLP
599 Lexington Avenue
29th Floor
New York, New York 10022-7650
Tel: 212-521-5400; Fax: 212-521-5450
wdippert@reedsmith.com

TO: Commissioner For Patents Fax No.: (703) 872-9306

FROM: William H. Dippert

RE: US Patent Application Serial No. 10/088,655

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Applicant: Yaacov Almog, et al.
Serial No: 10/088,655
Filing Date: March 14, 2002
For: Substrate Coating For Improved Toner Transfer And Adhesion
Enclosures: 1. Request For Withdrawal As Attorney Or Agent And Change Of Correspondence Address (2 pages)

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 1.14. 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.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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ADVANCED BIONICS CORPORATION
25129 RYE CANYON ROAD
VALENCIA, CA 91355

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OFFICE OF PETITIONS

In re Application of
Maltan and Whitehurst
Application No. 10/854,108
Filed: May 26, 2004
Attorney Docket No. AB-433U
For: Stimulation Using Microstimulator to Treat Tinnitus

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed October 25, 2004 (Certificate of Mailing date of September 24, 2004).

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.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The Office of Initial Patent Examination will be informed of the instant decision.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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Albert A. Maltan
Rinnerstrasse 425-7
Sistrans, A-6073
AUSTRIA

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OFFICE OF PETITIONS

Letter

In re Application of
Maltan and Whitehurst
Application No. 10/854,108
Filed: May 26, 2004
Attorney Docket No. AB-433U
For: Stimulation Using Microstimulator to Treat Tinnitus

Mr. Maltan:

You are named as a joint inventor in the above identified United States patent application.

Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you, or a registered patent attorney or agent on your behalf, have the right to obtain copies of any papers which are part of the file wrapper. 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).

General requests for information regarding the application should be directed to the File Information Unit at (703)308-2733.

Telephone inquiries regarding this communication may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

cc: ADVANCED BIONICS CORPORATION
25129 RYE CANYON ROAD
VALENCIA, CA 91355

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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LAW OFFICE OF KENNETH P. KROHN
P. O. BOX 4415
CARLSBAD, CA 92018

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OFFICE OF PETITIONS

In re Application of :
JAMES, et al. :
Application No. 10/854,124 : DECISION ON PETITION
Filed: May 26, 2004 : TO WITHDRAW
Attorney Docket No. **148.11** : 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 10, 2007.

The request is **NOT APPROVED.**

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request "mutual agreement with assignee and attorney" does not meet any the of conditions set forth in 37 CFR 10.40.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where

documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **RENEE SPENCER**
SAN DIEGO ENDOSCOPIC PRODUCTS, LLC
2120 39TH STREET
SAN DIEGO, CA 92105

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OFFICE OF PETITIONS

LAW OFFICE OF KENNETH P. KROHN
P. O. BOX 4415
CARLSBAD, CA 92018

In re Application of :

JAMES, et al. :
Application No. 10/854,124 : DECISION ON PETITION
Filed: May 26, 2004 : TO WITHDRAW
Attorney Docket No. **148.11** : 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 August 1, 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 Kenneth P. Krohn, the sole attorney of record. Kenneth P. Krohn has been withdrawn as attorney or agent of record. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Michael James at the address indicated below.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **MICHAEL JAMES**
386 LA SOLEDAD WAY
OCEANSIDE, CA 92057

cc: **RENEE SPENCER**
SAN DIEGO ENDOSCOPIC PRODUCTS LLC
CARLSBAD, CA 92018

UNITED STATES PATENT AND TRADEMARK OFFICE

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TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ
15 HAMPSHIRE STREET
MANSFIELD, MA 02048

Mail Date: 04/21/2010

Applicant	: James Harr	: DECISION ON REQUEST FOR
Patent Number	: 7608059	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/854,136	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1342** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON, DC 20004

Mail Date: 04/21/2010

Applicant	: Jean De Leval	: DECISION ON REQUEST FOR
Patent Number	: 7611454	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/854,140	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/27/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1132** 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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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MCDERMOTT, WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, D.C. 20005-3096

In re Application of
Osamu Yamazaki
Application No. 10/854,147
Filed: May 27, 2004
For: TRADE INDICATION DATA TRANSIMISSION METHOD AND SYSTEM AND RECEPTION APPARATUS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed May 27, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant. The application file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
571-272-2986

UNITED STATES PATENT AND TRADEMARK OFFICE

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MATTINGLY STANGER MALUR & BRUNDIDGE
1800 DIAGONAL ROAD, SUITE 370
ALEXANDRIA, VA 22314

In re Patent No. 6,940,376	:	
Issue Date: September 6, 2005	:	
Application No. 10/854,167	:	ON PETITION
Filed: May 27, 2004	:	
Attorney Docket No. ASA-1034-03	:	

This is a decision on the request for certificate of correction filed October 6, 2005, which is being treated as a request under 37 CFR 3.81(b) to add the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3220. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

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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MAR 16 2005

BARNES & THORNBURG
SUITE 900
750 17TH STREET, N.W.
WASHINGTON DC 20006-4607

In re Application of	:	
Jethro Shedrick	:	DECISION PETITION
Serial No.: 10/854,178	:	
Filed: May 27, 2004	:	
For: Male Incontinence Device	:	

This is in response to applicants' petition filed September 8, 2004, 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 Richard Bertsch 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 (703)273-0275.

Richard A. Bertsch

Richard A. Bertsch, Director
Technology Center 3700

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SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN NSW 2041 AU
AUSTRALIA

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SEP 1 3 2006

OFFICE OF PETITIONS

In re Application of :
McAvoy and Silverbrook :
Application No. 10/854,269 : DECISION ON PETITION
Filed: May 27, 2004 : UNDER 37 CFR 1.78(a)(3)
For: Thermoelastic Device Comprising an :
Expansive Element Formed From a :
Preselected Material :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 25, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

The inventors failed to sign the petition. Therefore, the petition cannot be granted. The renewed petition should include the signatures of the inventors. *See* 37 CFR 1.33.

The petition fails to include mandatory identifiers. Papers filed for an application can become separated for various reasons. Therefore, each paper, such as a petition or amendment, must include certain information in order to ensure the paper can be matched with the correct application. Each paper *must* list the application number and filing date. *See* 37 CFR 1.5(a) and MPEP 502. The Office would prefer papers also include the Art Unit number, name of the examiner, and title of the invention. The renewed petition should include the required identifiers.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was

unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the prior-filed application on page one following the first sentence of the specification is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. 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 is not proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Before the petition under 37 CFR § 1.78(a)(3) 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 Office notes the address of record for the instant application is the address associated with Customer Number 24011. The address for Customer Number 24011 includes the number, "2-041". The number appears incorrect based on papers within the file for the instant application. If petitioner wishes to change "2-041" to "2041", petitioner should complete the attached form. The completed form can be mailed separate from any renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Frances Hicks
Lead Paralegal
Office of Petitions

Form: PTO/SB/124A

PTO/SB/124A (01-06)
Approved for use through 12/31/2008. 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 Customer Number Data Change

Address to:
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To the Commissioner for Patents:

Please record the following data changes to **Customer Number**:

☐ Please change Address to:

Firm or Individual Name			
Address			
City		**State**	**Zip**
Country			
Telephone		**Email**	

☐ Please **delete** the following practitioner registration number(s) from the Customer Number indicated above:

☐ Please **add** the following practitioner registration number(s) from the Customer Number above:

☐ Additional practitioner registration numbers are listed on supplemental sheet(s) attached hereto (PTO/SB/124B or equivalent)

Request Submitted by: (must be a person, e.g. registered practitioner, associated with the customer number shown above)

Firm Name (if applicable)			
Signature			
Name of Person Submitting request		Registration No.	
Telephone Number		Date	

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop EBC, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option.

PTO/SB/124B (01-06)
Approved for use through 12/31/2008. 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 Customer Number Data Change	**Practitioner Registration Number Supplemental Sheet**
	Page of Pages

To the Commissioner for Patents:

Please record the following data Changes to **Customer Number:**

☐ Please **delete** the following practitioner registration number(s) from the Customer Number indicated above:

☐ Please **add** the following practitioner registration number(s) to the Customer Number indicated above:

Firm Name		
Date		☐ Additional supplemental sheet(s) attached hereto

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop EBC, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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393 DARLING STREET
BALMAIN NSW 2041 AU
AUSTRALIA

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OFFICE OF PETITIONS

In re Application of	:	
McAvoy and Silverbrook	:	
Application No. 10/854,269	:	DECISION ON PETITION
Filed: May 27, 2004	:	UNDER 37 CFR 1.78(a)(3)
For: Thermoelastic Device Comprising an	:	
Expansive Element Formed From a	:	
Preselected Material	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 2, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other

requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Petitioner may ignore the following language which appeared in the prior decision:

> The Office notes the address of record for the instant application is the address associated with Customer Number 24011. The address for Customer Number 24011 includes the number, "2-041".

This application is being forwarded to Technology Center Art Unit 1775 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

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
10/854,269	05/27/2004	1775	770	ZF002US	4	9	1

CONFIRMATION NO. 6916
CORRECTED FILING RECEIPT
OC000000021778044
OC000000021778044

24011
SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN, NSW 2041
AUSTRALIA

Date Mailed: 12/28/2006

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)

Gregory John McAvoy, Balmain, AUSTRALIA;
Kia Silverbrook, Balmain, AUSTRALIA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 10/636,259 08/08/2003 PAT 6,793,974
which is a CON of 09/693,079 10/20/2000 PAT 7,095,309

Foreign Applications

If Required, Foreign Filing License Granted: 07/24/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is
US10/854,269

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Thermoelastic device comprising an expansive element formed from a preselected material

Preliminary Class

428

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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P.O. BOX 19928
ALEXANDRIA VA 22320

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Tsuyoshi Kaneko :
Application No. 10/854,285 :
Filed: May 27, 2004 :
Attorney Docket No. 119602 :

This is a decision on the petition, filed January 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 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 2873 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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GREENBERG TRAURIG, LLP
200 PARK AVE.
P.O. BOX 677
FLORHAM PARK NJ 07932

COPY MAILED
SEP 11 2008

In re Application of	:	
Gene W. Kamerer	:	
Application No. 10/854289	:	ON PETITION
Filing Date: 05/07/2004	:	
Attorney Docket Number:	:	
GYN-5020	:	

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 **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 17, 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). Accordingly, the date of abandonment of this application is January 18, 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 (and the submission required by 37 CFR 1.114; (2) the petition fee; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

This application is being referred to Technology Center AU 3735 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.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

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LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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JUL 08 2009

OFFICE OF PETITIONS

In re Patent No. 7,449,185	:	
Yamaguchi et al.	:	DECISION DISMISSING
Application No. 10/854300	:	REQUEST FOR
Issue Date: November 11, 2008	:	RECONSIDERATION OF
Filed: May 27, 2004	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	UNDER 37 CFR 1.705(d)
APMOL.4DV1C1	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)," filed December 3, 2008, requesting that the patent term adjustment determination for the above-identified patent be changed from two hundred ninety-seven (297) days to three hundred forty-three (343) days.

The request for reconsideration is **DISMISSED**.

BACKGROUND

On November 11, 2008, the application matured into U.S. Patent No. 7,449,185, with a revised patent term adjustment of 297 days. On December 3, 2008, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 343 days.

OPINION

The application matured into U.S. patent No. 7,449,185, on November 11, 2008, with a revised patent term adjustment of two hundred ninety-seven (297) days. Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to Wyeth, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 534 days and the period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), of 46 days do not overlap as these periods do not occur on the same day. Given the applicant delay of record of 237 days, patentees maintain entitlement to 543 + 46 - 237 = 343 days of patent term adjustment.

The patent issued 3 years and 534 days after its filing date. However, the 534 days for the Office taking in excess of three years to issue the patent was determined to overlap with the 46 days[1] accorded during the pendency of the application for Office delay. 534 days was determined to be the actual number of days issuance of the patent was delayed. Accordingly, at issuance, the Office entered an additional 488 days for the Office taking in excess of three years to issue the patent for a total of 534 days of Office delay.

The Office does not agree that Patentees are entitled to both a period of adjustment of 46 days and a period of adjustment of 534 days. Patentees' calculation of the period of overlap is inconsistent with the Office's interpretation of this provision. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

> to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of

[1] A review of the application history reveals that this 46 day period for Office delay may be in error. The period for Office delay pursuant to 37 CFR 1.702(a)(2) is calculated based on the filing of a compliant appeal brief. In this instance, a compliant appeal brief was filed on January 5, 2007. The Office took action in response four months and 2 days later on May 7, 2007. Regardless, under the Office's interpretation of the "overlap" provision, the patent term adjustment remains 297 days.

> any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

Likewise, 37 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

The current wording of § 1.703(f) was revised in response to the misinterpretation of this provision by a number of applicants. The rule was slightly revised to more closely track the corresponding language of 35 U.S.C. 154(b)(2)(A). The relevant portion differs only to the extent that the statute refers back to provisions of the statute whereas the rule refers back to sections of the rule. This was not a substantive change to the rule nor did it reflect a change of the Office's interpretation of 35 U.S.C. 154(b)(2)(A). As stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed. The grounds specified in these sections cover the A) guarantee of prompt Patent and Trademark Office responses, B) guarantee of no more than 3 year application pendency, and C) guarantee or adjustments for delays due to interference, secrecy orders and appeals. A section by section analysis of 35 U.S.C. 154(b)(2)(A) specifically provides that:

> Section 4402 imposes limitations on restoration of term. In general, pursuant to [35 U.S.C.] 154(b)(2)(A)-(C), total adjustments granted for restorations under [35 U.S.C. 154](b)(1) are reduced as follows: (1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under [35 U.S.C.] 181 and administrative delay under [35 U.S.C.] 154(b)(1)(A)), the term should not be extended for each ground of delay but

> only for the actual number of days that the issuance of a patent was delayed; See 145 Cong. Rec. S14,718[2]

As such, the period for over 3 year pendency does not as argued by patentees overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the filing date of the application.

In this instance, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, May 27, 2004 to November 11, 2008 (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)). 46 days of patent term adjustment were accorded prior to the issuance of the patent for the Office failing to respond within specified time frames during the pendency of the application. The 534 days of patent term adjustment under 37 CFR 1.702(b) overlap with the 46 days under 37 CFR 1.702(a)(2). Accordingly, at issuance, the Office properly entered 488 (534 - 46 days) additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent.

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 297 days (534 - 237), and no further action is required.

CONCLUSION

The request for reconsideration of the revised patent term adjustment is dismissed.

The Office acknowledges receipt of the $200 fee set forth in §1.18(e). No additional fees are required.

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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).

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

STATUTE AND REGULATION

35 U.S.C. § 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999[3] (AIPA) provides that:

> ADJUSTMENT OF PATENT TERM. –
>
> (1) PATENT TERM GUARANTEES. –
>
> (A) GUARANTEE OF PROMPT PATENT AND TRADEMARK OFFICE RESPONSES. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to –
>
> (i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after –
>
> (I) the date on which an application was filed under section 111(a) of this title; or
>
> (II) the date on which an international application fulfilled the requirements of section 371 of this title;
>
> (ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;
>
> (iii) act on an application within 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 or a decision by a Federal court under section 141, 145, or 146 in a case in which allowable claims remain in the application; or
>
> (iv) issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.
>
> (B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY. – 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 –

[3] Public Law 106-113, 113 Stat. 1501, 1501A-557 through 1501A-560 (1999).

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

(C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS. — Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to —

(i) a proceeding under section 135(a);

(ii) the imposition of an order under section 181; or

(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.

(2) LIMITATIONS. —

(A) IN GENERAL. — To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

The implementing regulation, **37 CFR § 1.702**, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

(a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be

adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

(3) Act on an application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application; or

(4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

(b) Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including[4]:

In pertinent part, 37 CFR § 1.703 provides for calculation of the periods, as follows:

Period of adjustment of patent term due to examination delay.

(a) The period of adjustment under § 1.702(a) is the sum of the following periods:

---

[4] (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

(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;

(2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(4) The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final 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 146 where at least one allowable claim remains in the application 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; and

(6) The number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which

the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods[5]:

37 CFR 1.703(f) provides that:

The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). 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. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

---

[5] (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.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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FROM DIRECTORS OFFICE

MAR 23 2006

TECHNOLOGY CENTER 3600

ROBERT PLATT BELL
8033 WASHINGTON ROAD
ALEXANDRIA, VA 22308

In re application of
Michele Levan
Application No. 10/854,301 :
Filed: May 27, 2004 :
For: HUMUNGA TONGUE TM DOG TOY :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on July 19, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks conditions A) and B) above.

As to condition A), Robert Lev was also appointed but it is not clear if he is to be withdrawn also.

As to condition B), a proper reason for withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6587
Facsimile No.: (571) 273-8300

KJD/slb: 03/16/06

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TECHNOLOGY CENTER 2100

Daniel D. Hill
Freescale Semiconductor, Inc.
Law Department
7700 West Parmer Lane
MD:TX32/PL02
Austin, TX 78729

In re Application of: Perry Pelley
Application No. 10/854,314
Filed: May 26, 2004
For: Cache Line Memory and Method Therefor

DECISION ON PETITION

This is a decision on the petition, filed 06 December 2005, requesting to have a lost Amendment After Final entered into the record, as being timely filed.

The Petition is **GRANTED**.

A review of the file record indicates that a Final Office action was mailed on June 26, 2006, setting a shortened statutory period for response to expire three month from the mail date thereof.

The petition is accompanied by a copy of Auto-Reply Facsimile Transmission indicating that a response was in fact filed with the Patent and Trademark Office (PTO) and bearing a PTO receipt date of August 9, 2006.

The response, acknowledged as having been received in the PTO on August 9, 2006, is not of record in the application file and cannot be located.

37 CFR§ 1.8 (Certificate of mailing or transmission)states in part:

(a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
(1) Correspondence will be considered as being timely filed if:
(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person

signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Accordingly, it is concluded that a response to the Final Office action was timely received in the PTO but lost after receipt thereof.

In view of the above stated reasons, the Petition is **GRANTED,** the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the response submitted on December 06, 2006 is accepted since the Office has apparently misplaced the response originally submitted.

The application file is being forwarded to the examiner for consideration of the response under current Office practice in considering responses filed after Final rejections.

It should be noted that since the response after the Final rejection was submitted within the first two months of the three months shortened statutory period for response set in the Final Office action, the period for response expires as of the mail date of the Advisory action to be mailed should the examiner determine that the response does not prima facie put the application in condition for allowance. In no event however, will the statutory period for response expire later than six months from the date of the Final rejection.

Any inquiry concerning this decision should be directed to Mano Padmanabhan whose telephone number is (571) 272-4210.

Mano Padmanabhan

Mano Padmanabhan
WQAS
Technology Center 2100
Computer Architecture, Software, and
Information Security

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ROHM AND HAAS ELECTRONIC MATERIALS
CMP HOLDINGS, INC.
451 BELLEVUE ROAD
NEWARK, DE 19713

Mail Date: 04/21/2010

Applicant	: Joseph G. Ameen	: DECISION ON REQUEST FOR
Patent Number	: 7618529	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/854,321	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1181** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
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DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

Mail Date: 04/21/2010

Applicant	: Kohshi Maeda	: DECISION ON REQUEST FOR
Patent Number	: 7592137	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 10/854,327	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/27/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **240** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080725

DATE : July 31, 2008

TO SPE OF : ART UNIT 3671

SUBJECT : Request for Certificate of Correction on Patent No.: 7,100,233

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: Thomas Will **Art Unit** 3671

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

CHEVRON CORPORATION
P.O. BOX 6006
SAN RAMON, CA 94583-0806

COPY MAILED

AUG 07 2008

In re Application of	:	
Baris Guyaguler, et. al.	:	
Application No. 10/854,379	:	DECISION ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No. T-6354	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 20, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Final Rejection of November 16, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A three 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 February 17, 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) an adequate statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 2128 for appropriate action by the Examiner in the normal course of business on the reply received.

Andrea Smith
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Jan-06

CRAIG S. ISSOD
8 GOLDEN CIRCLE
SOUTHAMPTON MA 01073

COPY MAILED
JAN 31 2006
OFFICE OF PETITIONS

In re Application of	:	
Craig S. Issod	:	
Application No. 10/854,383	:	ON PETITION
Filed: 26 May, 2004	:	
For: CHIMNEY COVER WITH	:	
EXTENDED PLINTH AND DEFLECTOR	:	

This is a decision on the petition under 37 CFR 1.137(a), filed on 28 November, 2005.

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."

The application became abandoned on 15 May, 2005, for failure to timely file a response to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 14 April, 2005, which set a one (1) month shortened statutory period for reply. No extensions of the time for reply under 37 CFR 1.136(a) were obtained. An amendment was filed on 29 April, 2005, and a Failure to Acceptably Respond to Notice of Non-Compliant Amendment (37 CFR 1.121)—No New Time Period for Reply is Provided, was mailed on 10 May, 2005. Notice of Abandonment was mailed on 28 November, 2005.

A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition lacks items (1) and (3), above.

As to item (1), the examiner has determined that the amendment filed on 28 November, 2005, with the present petition, is non-compliant. Specifically, each claim has not been provided with a proper status identifier. In order for the requirement of 37 CFR 1.137(a)(1) to be met, a proper reply to the Office communication mailed on 14 April, 2005, must be filed. Petitioner should submit an amendment in compliance with 37 CFR 1.121 with any renewed petition.

As to item (3), the Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to be "unavoidable".[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

[1] 35 U.S.C. § 133.

> important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[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]

Petitioner asserts that he has no record of ever having received the Office communication mailed on 10 May, 2005. Specifically, petitioner asserts, in pertinent part

> 3. It is certain that, had I received the communication, I would have simply reprinted the amendments and signed them. This would seem to be covered under 1.135(c) as a bona-fide attempt to advance the application, although a telephone conversation with the examiner on 11/22/2005 indicated that he intends to abandon the application and would not consider my arguments otherwise without a petition.

A review of the record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity in

---

[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).

the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[5]

However, as petitioner is a *pro se* applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matters. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Office communication mailed on 10 May, 2005, was not entered into that system. The Office would like to see documentary evidence and records as may exist which would substantiate that petitioner exercised due diligence with respect to petitioner's most important business.

Accordingly, the petition under 37 CFR 1.137(a) is **dismissed**.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b), which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing

[5] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

application. In a nonprovisional utility or plant application filed on or after 8 June, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a 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).

Should petitioner decide to file a petition under 37 CFR 1.137(b), the additional petition fee due would be $750.00 for a small entity.

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571)273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/64

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www.uspto.gov

BAYER MATERIAL SCIENCE LLC
100 BAYER ROAD
PITTSBURGH PA 15205

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MAY 3 1 2005

OFFICE OF PETITIONS

Applicant: Stere et al.
Appl. No.: 10/854,385
Filing Date: May 26, 2004
Title: HYDROGENATED VINYL-POLYBUTADIENES
Attorney Docket No.: PO-8115
Pub. No.: US 2004/0242797 A1
Pub. Date: December 2, 2004

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), filed on February 1, 2005, for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course, unless the patent issues before the application republishes.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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

MAXEY LAW OFFICES, PLLC
13630 58TH ST. NORTH
SUITE 101
CLEARWATER, FL 33760

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JAN 1 3 2009

OFFICE OF PETITIONS

In re Application of	:	
Guy Wilson	:	
Application No. 10/854,391	:	DECISION ON PETITION
Filed: May 26, 2004	:	
Attorney Docket No. 04-01006	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 1, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 30, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 31, 2006. A Notice of Abandonment was mailed December 8, 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 August 31, 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 Maxey Law Offices, PLLC was counsel of record at the time of abandonment, Maxey Law Offices, PLLC should explain why this application became abandoned while it was under their control and what efforts Maxey Law Offices, PLLC made to further reply of itself and with whom this matter was discussed outside of Maxey Law

Offices, PLLC. 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), Maxey Law Offices, PLLC and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then at Maxey Law Offices, PLLC, 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 Maxey Law Offices, PLLC 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).

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 $555 extension of time fee submitted with the petition on December 1, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card account.

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 Alicia Kelley regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Martin Lurie
10198 E. Lake PI
Englewood CO 80111

MAILED

APR 2 0 2010

OFFICE OF PETITIONS

In re Application of	:	
Martin S. Lurie	:	
Application No. 10/854,410	:	DECISION ON PETITION
Filed: May 25, 2004	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 8, 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 October 8, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 9, 2009. A Notice of Abandonment was mailed on May 8, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3618 for appropriate action by the Examiner in the normal course of business on the reply received January 8, 2010.

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

07 MAR 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

William D. Blackman
CARRIER, BLACKMAN & ASSOCIATES
24101 Novi Road, Suite 100
Novi, Michigan 48375

In re Application of:	:	
KONNO, Takeshi, et al.	:	DECISION ON PETITION UNDER
Application No.: 10/854,411	:	37 CFR 1.182
Filing Date: 26 May 2004	:	
Attorney's Docket No.: CSP-105-A	:	
For: MOTORCYCLE ELECTRONIC KEY	:	
SYSTEM	:	

This decision is issued in response to applicants' "Petition Under 37 CFR 1.182" filed 22 December 2004 which requests that the present application be treated as having been filed under 35 U.S.C. 371 as a U.S. National Phase of PCT/JP03/12273. Deposit Account No. 50-0744 will be charged the required petition fee.

BACKGROUND

On 26 May 2004, applicants filed the present U.S. application. The application was treated as an application filed under 35 U.S.C. 111(a).

On 27 July 2004, the USPTO issued a filing receipt herein.

On 22 December 2004, applicants filed the petition considered herein. The petition states that the present application was intended as a national stage filing under 35 U.S.C. 371, and requests that the application be converted to such an application.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

> The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a) of the MPEP states the following:

> If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

The materials filed by applicants to initiate this application included a "Utility Patent Application Transmittal" (Form PTO/SB/05) which specifically states that it is for use "only for new nonprovisional application under 37 CFR 1.53(b)." The use of this transmittal letter is inconsistent with the intent to enter the national stage under 35 U.S.C. 371. Accordingly, the filed application was properly treated as a filing under 35 U.S.C. 111(a).[1]

Because the application was properly treated under 35 U.S.C. 111(a), the petition to convert the application to a national stage under 35 U.S.C. 371 is only grantable if accompanied by a showing of sufficient cause for such a conversion (i.e., the loss of patent rights or lack of other available remedies). Applicant here has not made such a showing. Pursuant to 37 CFR 1.78, the present application can be corrected to claim priority to the international application, if so desired. In the alternative, applicants could file a separate national stage application (accompanied by a petition for revival of the international application) and thereby initiate the desired national stage application. Based on the above, the present record does not support a conversion of the application to a national stage under 35 U.S.C. 371.

CONCLUSION

Applicants' petition to convert the application from an application filed under 35 U.S.C. 111(a) to a national stage application under 35 U.S.C. 371 is **DISMISSED** without prejudice. Processing of this application under 35 U.S.C. 111(a) will continue.

Any request for reconsideration of this decision on the merits must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any such request should be entitled "Renewed Petition Under 37 CFR 1.182." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner For Patents, Office of PCT Legal Administration, PO Box 1450, Alexandria, Virginia 22313-1450, with the contents marked to the attention of the Office Of PCT Legal Administration.

Richard M. Ross
Attorney Advisor
Office Of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

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[1] The petition refers to efforts made by applicants to correct the filing and clarify that a national stage application was required. However, the USPTO must process papers as filed, and the present filing included the Form PTO/SB/05 transmittal letter and therefore "conflicting instructions" that required this application to be treated under 35 U.S.C. 111(a).

20 JUL 2005

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William D. Blackman
CARRIER, BLACKMAN & ASSOCIATES
24101 Novi Road, Suite 100
Novi, Michigan 48375

In re Application of	:	DECISION ON
Konno, Takeshi et al.	:	
Application No.: 10/854,411	:	PETITION UNDER
Filing Date: 26 May 2004	:	
Attorney's Docket No.: CSP-105-A	:	
For: MOTORCYCLE ELECTRONIC KEY SYSTMEN	:	37 CFR 1.78(a)(3)

This is in response to applicant's communication "PETITION UNDER 37 CFR 1.78(a)(3) FOR ACCEPTANCE OF UNINTENTIONALLAY DELAYED CLAIM FOR PRIORITY UNDER 35 USC 120" filed 18 April 2005.

BACKGROUND

In a decision from this Office on 07 March 2005, the petition under 37 CFR §1.182 was dismissed because the application was treated properly under 35 USC §111(a), and applicant could correct the priority claim under 37 C.F.R. §1.78.

On 18 April 2005, petitioner filed a petition 37 CFR 1.78(3) to claim priority under 35 USC 120 from international application PCT/JP2003/012273 under 37 C.F.R. §1.178(a)(3).

DISCUSSION

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) and 1.78(a)(5)(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 paragraph (a)(2) of this section 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)(2)(ii) of this section and 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 nonprovisional application was filed on 26 May 2004 and the claim for benefit herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) . *See* 35 U.S.C. §§120 and 365(c)and 119(e).

Regarding requirment (1) a reference to the prior-filed international 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) and 1.78(a)(5)(iii).

Regarding requirement (2), the surcharge has been provided.

Regarding requirement (3), the proper statement has been provided.

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C.§§120 and 365(c) to the prior-filed international applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

Applicant is advised that the granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) and (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 application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) and 37 CFR 1.78(a)(4) and (a)(5)must be met. 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.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.78(a)(3) is **GRANTED**.

This application will be forwarded to the proper Technology Center.

Charles Pearson
Director
Office of Legal Administration
Telephone: (571) 272-3224
Facsimile: (571) 273-0459

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JAMES KLEKOTKA
SUITE 10
4350 W. CHANDLER BLVD.
CHANDLER, AZ 85226

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In re Application of :
James E. Willis, et al. :
Application No. 10/854,424 : ON PETITION
Filed: May 27, 2004 :
Attorney Docket No. 071469-0309636 (PC8023A) :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed May 9, 2008.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before March 31, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed December 31, 2007, which set a statutory period for reply of three (3) months. A Notice of Abandonment was subsequently mailed on April 28, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,440 issue fee and the $300 publication fee; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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KED & ASSOCIATES, LLP
P.O. BOX 221200
CHANTILLY, VA 20153-1200

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JUN 03 2009

OFFICE OF PETITIONS

In re Application of :
Joseph A. Izatt :
Application No. 10/854,426 : ON PETITION
Filed: May 27, 2004 :
Attorney Docket No. DUKE-0244 :

This is a decision in response to the petition under 37 CFR 1.137(b), filed April 14, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed April 15, 2008, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on June 16, 2008. *See* MPEP 1215.04. On April 14, 2009, the present petition was filed.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Laura M. Kelley appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party on whose behalf she acts. A courtesy copy of this decision is being mailed to petitioner. However, if Ms. Kelley desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $405 and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay[1].

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

This application is being referred to Technology Center AU 2886 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment filed in accordance with 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: LAURA M. KELLEY
MYERS BIGEL SIBLEY & SAJOVEC
POST OFFICE BOX 37428
RALEIGH, NC 27627

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COON RAPIDS, MN 55448-0755

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OFFICE OF PETITIONS

In re Application of
Andrew Blaylock
Application No. 10/854,440
Filed: May 26, 2004
Attorney Docket No. B458-005-PAT

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed February 22, 2010.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue and publication fees on or before January 7, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed October 7, 2009, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on January 8, 2010. A Notice of Abandonment was mailed on January 25, 2010. On February 22, 2010, 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 $755 issue fee and $300 publication fee; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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Attn: Kenneth S. Wheelock
General Electric Company
One Plastics Avenue
Pittsfield MA 01201

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AUG 06 2008

OFFICE OF PETITIONS

In re Application of :
Suresh K. **RAJARAMAN** :
Application No. 10/854,471 : ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. US 145584-1 :

This is a decision on the petition, filed March 6, 2008, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed on February 22, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned, by operation of law, on May 23, 2006. A Notice of Abandonment was mailed on October 17, 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 items(3).

The showing of record raises questions as to whether the abandonment of this application was unintentional within the meaning of 35 USC 41(a)(7) and CFR 1.137(b). Currently; the delay has not been shown to the satisfaction of the Director to be unintentional.

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 Commissioner 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 delay 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) 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 petition must clearly identify the party having the right to reply to avoid abandonment on May 23, 2006. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). The record suggests that Ken Wheelock (Wheelock) was the party having the right to reply at the date of abandonment period. Wheelock has asserted that the delay is unintentional yet his statement filed March 6, 2008 specifically states, 1) *all* attorneys were "pressed into service" to consummate the new business transaction in July 2006; 2) there was a "great deal of confusion" as a result of differences between the legacy docketing

system and the new docketing system; 3) the new business was "understaffed"; and, 4) with an increase in attorney staffing [presumably sometime after December 2006] patent attorneys were now able to "turn their attention to matters" [e.g., abandonment of the instant application].

Wheelock has not provided an acceptable statement of unintentional delay that originally resulted in the abandonment. Instead, the petitioner's statement indicates that in July 2006, GE intentionally chose a direct course of action to pursue other business transactions to include assignment of all attorneys' attention toward the new business transactions. The petitioners statement alleges that matters were "unintentionally neglected" yet the remarks on page one of the statement suggest that GE intentionally and deliberately chose to pursue another business transactions thereby intentionally neglecting to respond to the outstanding office action mailed February 22, 2006. The questions still remain for Wheelock as to what efforts he made to further reply to the outstanding office action and with whom this matter was discussed.

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), Wheelock and whoever else was involved with this application at the time of abandonment. Statements are required from 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).

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 $1050 extension of time fee submitted with the petition on March 6, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Any renewed petition may 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

Telephone inquiries concerning this decision should be directed to Lori Baker Amerson at (571) 272-6052 or in her absence the undersigned at (571) 272-7099.

Christal Bottuff

for David Bucci
Petitions Examiner
Office of Petitions

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BEDMINSTER, NJ 07921

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OFFICE OF PETITIONS

In re Application of
Stephen Pancoast Norton, et al.
Application No. 10/854,478
Filed: May 26, 2004
Attorney Docket No. 040201

ON PETITION

This is in response to the communication, filed February 9, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

On April 30, 2009, the Office mailed a communication to applicant allowing time for a response to be filed in response to the double patenting rejection. The application became abandoned on November 14, 2009, for failure to submit a timely response to the communication. On February 19, 2010, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to applicant error in filing a complete response to the Notice mailed October 13, 2009.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates that the petitioner did attempt to file a reply to the communication on May 4, 2010, which included a terminal disclaimer to overcome the double patenting rejection, however the terminal disclaimer filed was still improper. Since the terminal disclaimer was not accepted, the application became abandoned as the Office has not received a proper reply to the initial Office action mailed October 28, 2009.

Since a proper response to the outstanding Office action has not been received, the application was properly abandoned. Accordingly, the petition to withdraw the holding of abandonment cannot be granted at the present time.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).

(2) The petition fee as set forth in 37 CFR 1.17(m), **$810.00 for a small entity**;

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Any request for reconsideration of this decision should be submitted within **TWO (2) MONTH** from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(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: (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 may be directed to the April M. Wise at (571) 272-1642.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.

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393 DARLING STREET
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AUG 27 2008

In re Application of	:	
Kia Silverbrook, et al.	:	
Application No. 10/854,495	:	ON PETITION
Filed: May 27, 2004	:	
Attorney Docket No. PLT011US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed August 31, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). A three (3) month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 31, 2006. The Notice of Abandonment was mailed October 3, 2007.

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).

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states:

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the other applicant has not given the one signing a power of attorney.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Kia Silverbrook) was ever given a power of attorney to act on behalf of all inventors listed, or that petitioner Kia Silverbrook is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

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 $1,210 extension of time fee submitted with the petition on October 28, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
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The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-2991.

Chris Bottorff

Chris Bottorff
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Kia Silverbrook, et al.	:	
Application No. 10/854,495	:	ON PETITION
Filed: May 27, 2004	:	
Attorney Docket No. PLT011US	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed September 15, 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 Restriction Requirement, mailed August 31, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). A three (3) month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 31, 2006. The Notice of Abandonment was mailed October 3, 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 election; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay.

The petition fee of $1,540 paid for filing this renewed petition will be credited back to your deposit account. There is no fee for filing a renewed petition.

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-29914.

The application file is being referred to Technology Center AU 2861 for appropriate action the concurrently filed election.

Chris Bottorff
Petitions Examiner
Office of Petitions

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In re Application of :
Simon Robert Walmsley, et al. :
Application No. 10/854,498 : ON PETITION
Filed: October 29, 2007 :
Attorney Docket No. PTL012US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed August 31, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). A three-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on January 1, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);

(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;

(3) An assignee as provided for under §3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Kia Silverbrook) was ever given a power of attorney to act on behalf of inventor all the inventors, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

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:

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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) 272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Simon Robert Walmsley, et al.	:	
Application No. 10/854,498	:	DECISION ON PETITION
Filed: October 27, 2007	:	
Attorney Docket No. PTL012US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 5, 2008, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed August 31, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). A three-month extension of time under provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on January 1, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a an election, (2) the petition fee of $1540, and (3) a proper statement of unintentional delay.

The petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 2861 for appropriate action by the Examiner in the normal course of business on the reply received May 5, 2008.

April M. Wise
Petitions Examiner
Office of Petitions

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In re Application of Walmsley et al. :
Application No. 10/854,501 : Decision on Petition
Filing Date: May 27, 2004 :
Attorney Docket No. PLT038US :

This is a decision on the petition under 37 CFR 1.137(b), filed July 5, 2006, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to file a complete reply to the Notice to File Missing Parts of Application (Notice) mailed August 23, 2004. The Notice set a period for reply of two (2) months from the mail date of the Notice. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on October 24, 2004. A Notice of Abandonment was mailed on April 26, 2006.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The Office of Initial Patent Examination will be informed of the instant decision and will take steps to prepare the application for examination in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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In re Application of	:
Silverbrook, et al.	:
Application No. 10/854,504	: DECISION GRANTING
Filed: May 27, 2004	: PETITION
Attorney Docket No. PLT006US	:

This is a decision on the petition to revive under 37 CFR 1.137(b), filed July 3, 2006.

The petition is **GRANTED**.

The application became abandoned for failure to submit a complete reply in response to the Notice to File Missing Parts, mailed July 28, 2004. This Notice set an extendable period for reply of two (2) months for applicants to submit the statutory basic filing fee, a surcharge for its late filing, and additional claims fee. No complete reply having been received, the application became abandoned on September 29, 2004. A Notice of Abandonment was mailed on April 26, 2006.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required fees.

The matter is being forwarded to the Office of Initial Patent Examination for pre-examination processing.

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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UNITED PLAZA, SUITE 1600
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OFFICE OF PETITIONS

In re Application of	:	
Kenneth C. WALDMAN, et al	:	
Application No. 10/854,531	:	DECISION ON PETITION
Filed: May 26, 2004	:	TO WITHDRAW
Attorney Docket No. SIM2-PT008.1	:	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 July 9, 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 Anthony S. Volpe on behalf of all the practitioners associated with Customer Number 3624.

All practitioners associated with Customer Number 3624 have been withdrawn.

Applicant is reminded that there is no practitioner of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: KENNETH C. WALDMAN
25 TANGLEWOOD DRIVE
READING, PA 19607

cc : SFCA, INC.
501 S. 9TH STREET
READING, PA 19602

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VOLPE AND KOENIG, P.C.
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19193

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OFFICE OF PETITIONS

In re Application of	:	
Kenneth C. WALDMAN, et al	:	
Application No. 10/854,531	:	DECISION ON PETITION
Filed: May 26, 2004	:	TO WITHDRAW
Attorney Docket No. SIM2-PT008.1	:	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 July 9, 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 Anthony S. Volpe on behalf of all the practitioners associated with Customer Number 3624.

All practitioners associated with Customer Number 3624 have been withdrawn.

Applicant is reminded that there is no practitioner of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6735.

Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: KENNETH C. WALDMAN
25 TANGLEWOOD DRIVE
READING, PA 19607

cc : SFCA, INC.
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OFFICE OF PETITIONS

In re Application of	:	
Sharon A. Ritchey et al	:	
Application No. 10/854,548	:	DECISION ON PETITION
Filed: May 26, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1019-P-4	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 2, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to a prior-filed nonprovisional application.

The petition is **DISMISSED.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The

relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an **Application Data Sheet or an amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)),** which states the relationship of the prior-filed application to this application, are required.

Additionally, the issue fee in this case was paid on November 29, 2006. Therefore, it is conceivable that the application will issue before either the filing or the granting of a renewed petition under 37 C.F.R. §1.78(a)(3). In such case, submission of a certificate of correction (along with the $100 fee) will be required as a condition for granting the petition under 37 C.F.R. §1.78(a)(3).

Further correspondence with respect to this matter should be addressed as follows:

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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