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ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.
Intellectual Property Department
P.O. Box 10064
MCLEAN VA 22102-8064

MAILED
JUN 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Glenn Rolus Borgward	:	
Application No. 10/563,741	:	DECISION ON PETITION
Filed: January 9, 2006	:	
Attorney Docket No. 744125-2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 13, 2011, 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 5, 2010, 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 6, 2011. A Notice of Abandonment was mailed on April 14, 2011.

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 2629 for appropriate action by the Examiner in the normal course of business on the reply received May 13, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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 RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: S8625.0006	Patent Number: 7,661,269
Filing Date (or 371(b) or (f) Date): May 25, 2006	Issue Date: February 16, 2010
First Named Inventor: Bonzani	
Title: GAS TURBINE BURNER	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature	Date August 13, 2010
Name (Print/Typed) Stephen A. Soffen	Registration Number 31,063

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☑ *Total of 1 forms are submitted.

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 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: 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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DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

Mail Date: 09/14/2010

Applicant	: Federico Bonzani	: DECISION ON REQUEST FOR
Patent Number	: 7661269	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/563,800	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **777** 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.
10/563,954	01/10/2006	Werner Pfeiffer	50244	3594

1609 7590 09/22/2010
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

EXAMINER
POPOVICS, ROBERT J

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
09/22/2010	PAPER

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

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

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wk

SEP 2 2 2010

Mailed:

In re application of	:	
Pfeiffer	:	DECISION ON
Serial No. 10/563,954	:	PETITION
Filed: January 10, 2006	:	
For: METHOD FOR FILTERING FLUIDS AND DEVICE FOR IMPLEMENTING SAID METHOD		

This is a response to Applicant's Petition under 37 CFR 1.181 to invoke supervisory authority and require entry of the amendments to the specification and drawings included in the Amendments filed on August 31, 2009 and January 21, 2010. The Examiner determined that the amendments introduced new matter into the disclosure. The Examiner's position is that added material relating to flow directional arrows; lines indicating various cross-section cuts; and all amendments to the Brief Description of the Drawings are not supported by the original disclosure.

The addition of the arrows is supported by the present specification. The newly submitted drawings add arrows "f" and "w" to show the filtering flow and the washing flow, as described in paragraph spanning pages 8-9 of the substitute specification and on page 9 of the originally filed specification.

Lines for cross section lines need not be straight and the cross sections need not be limited to a single plane to comply with standard practices. Applicants have provided evidence that these offset sections are standard drawing practice (page 165 of Technical Drawing by Giesecke et al. and internet publication www.tpub.com).

DECISION

The Petition is **GRANTED**.

Serial Number: 10/563,954

The Examiner is directed to enter the amendments to the specification and drawings that were initially subjected to the new matter rejection.

/W. GARY JONES/
Gary W. Jones, Director
Technology Center 1700
Chemical and Materials Engineering

Mark S. Bicks
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON, DC 20036

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Decision Date : April 13, 2012

In re Application of :

Werner Pfeiffer

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10563954

Filed : 10-Jan-2006

Attorney Docket No : 50244

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed April 13, 2012 , 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 in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 1778 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	10563954
Filing Date	10-Jan-2006
First Named Inventor	Werner Pfeiffer
Art Unit	1778
Examiner Name	ROBERT POPOVICS
Attorney Docket Number	50244
Title	METHOD FOR FILTERING FLUIDS AND DEVICE FOR IMPLEMENTING SAID METHOD

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

○ One or more claims are unpatentable

◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)

○ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).

RCE request,submission, and fee.

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on

☒ Are attached.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

○ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

◉ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Erik R. Swanson/
Name	Erik R. Swanson
Registration Number	40833

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OFFICE OF PETITIONS

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

In re Patent No. 7,939,144	:	
Issue Date: May 10, 2011	:	
Application No. 10/564,254	:	DECISION ON PETITION
Filed: March 6, 2006	:	
Attorney Docket No. 1803-2 PCT/US	:	

This is a decision on the Request For Certificate of Correction, which is being treated as a Petition Under 37 CFR §3.81(b), filed November 3, 2011, to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B and such error was inadvertent. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Maltex Leisure Industries"

to:

--Ten Cate Thiolon B.V.--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite the requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR §1.20(a), was submitted. However, the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i),, is required. Therefore, since the petition was accompanied deposit account authorization, the fee has been charged. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,939,144.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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BOSTON MA 02109

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In re Application of	:	
Aaron Lee Davidson, et al.	:	
Application No. 10/564,262	:	ON PETITION
Filed: February 5, 2007	:	
Attorney Docket No. 0289917.00123US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 24, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 29, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 30, 2010. The Notice of Abandonment was mailed August 26, 2010.

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, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2991.

This application is being referred to Technology Center AU 2161 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.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,414	01/12/2006	Noriyuki Sakoh	283098US6PCT	8040

22850 7590 12/09/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
SHIU, HO T

ART UNIT	PAPER NUMBER
2457	

NOTIFICATION DATE	DELIVERY MODE
12/09/2010	ELECTRONIC

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

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

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

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

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DEC 08 2010

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

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

In re Application of: SAKOH, N., et. al.
Application No. **10/564,414**
Filed: January 12, 2006
Docket No. 283098USPCT
Title: CONTENT ACQUISITION METHOD

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed on September 10, 2010 under 37 CFR § 1.181(a)(3) requesting that the Examiner consider all references listed on the PTO-1449 filed with the Information Disclosure Statements (IDS) on January 12, 2006.

The petition is **DISMISSED AS MOOT**.

A review of the file of instant application indicates that on November 24, 2010 and November 16, 2010, the Office considered each of the references listed on the PTO-1449 above mentioned and that applicant was informed of such via a Supplemental Notice of Allowance. Since each of those references listed on the above mentioned IDS has been already considered, this petition is rendered moot. Image file wrapper (IFW) is available from Patent Application Information Retrieval (PAIR) system.

Accordingly, the petition is **DISMISSED AS MOOT**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,458	01/12/2006	Annaliesa S. Anderson	21569YP	7338

210 7590 05/31/2011
MERCK
P O BOX 2000
RAHWAY, NJ 07065-0907

EXAMINER
DEVI, SARVAMANGALA J N

ART UNIT	PAPER NUMBER
1645	

MAIL DATE	DELIVERY MODE
05/31/2011	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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MAY 3 1 2011

MERCK
P O BOX 2000
RAHWAY NJ 07065-0907

In re Application of:	:
Anderson et al.	:
Serial No.: 10/564,458	: PETITION DECISION
Filed: January 12, 2006	:
Attorney Docket No.: **21569YP**	:

This is in response to the petition under 37 CFR § 1.181, filed May 13, 2011, requesting that the finality of the Office action of April 13, 2011 be withdrawn.

BACKGROUND

Only the Office action(s) pertinent to the petition will be discussed herein.

The examiner mailed a final Office action on April 13, 2011 setting a three month statutory limit for reply. At the time of this final Office action, claims 1, 4-9, 33-36 and 38-54 were pending. The examiner rejected claims 1, 4, 7-9, 33-35 and 38-54 and objected to claims 5, 6 and 36. Claims 1, 4, 7, 33 and 49 were rejected under 35 U.S.C. § 102(a) as being anticipated by Roche et al. (Microbiology 149: 643-654, March 2003 - Applicants' IDS) as evidenced by the IDS document 'Opposition against European Patent No. 1651166 in the name of Merck Sharp & Dogme Corp.- Applicants' IDS) and Applicants' admitted state of the prior art. Claims 8, 9 and 38-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roche et al. (Microbiology 149: 643-654, March 2003 - Applicants' IDS) in view of Foster et al. (US 2003/0186275 A 1) ('275). Claims 7, 8 9 and 38-54 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1, 4, 7-9, 33-35, 38-44 and 49-51 were rejected under 35 U.S.C. § 112, first paragraph, as containing inadequate written description.

In response thereto, applicants filed this petition on May 13, 2011, requesting that the finality of the Office action of April 13, 2011 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed by applicants on May 13, 2011, applicants submit that the finality of the Office action of April 13, 2011 is premature. Applicants argue that "...the April 13, 2011 office action reopening prosecution on the basis of newly cited art, and making the action final, failed to take into account applicants' certification in compliance with 37 C.F.R. § 1.97 (e). Under MPEP § 1207.04 the rejection should not have been made final. MPEP § 1207.04 entitled "Reopening of Prosecution after Appeal [R-8]" provides:

> 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. (Emphasis added.)"

More specifically, applicants point out "On January 20, 2011, applicants filed a Communication and Informational Disclosure Statement (IDS) providing the patent office with a copy of an opposition filed on a corresponding European application, a reference cited in the opposition, and the notice of the opposition. Applicants' submission did not include any amendments to the claims. The January 20, 2011 Communication pointed out that the European opposition was filed not more than three month prior to the filing of the IDS, and included copies of the The Notice of Opposition and Opposition statement with dates confirming applicants assertion. The January 20, 2011 IDS included a certification under 37 C.F.R. 1.97, complying with 37 C.F.R. 1.97 (e)(1), by checking off a box indicating the following: the Information Disclosure Statement is filed on or before payment of the issue fee and each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. Authorization is therefore given to charge Deposit Account No. 13-2755 for the fee required under 37 C.F.R. 1.17(p)."

Applicants' argument is well taken and persuasive. Accordingly, in the instant case, it is not proper for the office action to be made final since the January 20, 2011 IDS included a certification under 37 C.F.R. 1.97, complying with 37 C.F.R. 1.97 (e).

DECISION

The petition is **GRANTED.**

The Office action mailed April 13, 2011 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George C. Elliott

George Elliott
Director, Technology Center 1600

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AUG 19 2010

OFFICE OF PETITIONS

K&L GATES LLP
P.O. BOX 1135
CHICAGO, IL 60690

In re Application of
Marie-Christine Secretin
Application No. 10/564,599
Filed: January 13, 2006
Attorney Docket No.: 3712036.00702

ON PETITION

This is a decision in response to the petition, filed June 18, 2010, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 4, 2009, 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 March 5, 2010. This decision precedes the mailing of a Notice of Abandonment. On June 18, 2010, 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) a proposed reply in the form of an amendment; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 1781 for appropriate action by the Examiner in the normal course of business on the response filed June 18, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :
Genkin, et al. :
Application No. 10/564,609 : ON PETITION
Filed: January 12, 2006 :
Attorney Docket No. 29832-0003US1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 20, 2012, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned April 22, 2010 for failure to timely submit a proper reply to the final Office action mailed January 21, 2010. The final Office action set a three month shortened statutory period of time for reply. No petition for extension of time pursuant to 37 CFR 1.136(a) was timely submitted. Notice of Abandonment was mailed July 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a continuing application under 37 CFR 1.53(b); (2) the required petition fee; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/835,036.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 7,935,190	: DECISION ON
Stouffs, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/564,652	: of PATENT TERM ADJUSTMENT
Issue Date: May 3, 2011	:
Filed: January 13, 2006	:
Attorney Docket No. 19790-0005US1	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed July 1, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand one hundred seventy-nine (1179) days to one thousand three hundred six (1306) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

On May 3, 2011, the instant application matured into U.S. Patent No. 7,949,943 with a patent term adjustment of one thousand one hundred seventy-nine (1179) days. The Office determined a patent term adjustment of 1179 days based upon 928 days of Office delay pursuant to 37 CFR 1.703(a)(1) and 553 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 3, 12, and 31 days of Applicant delay under 37 CFR 1.704(b).

Patentee argues that even though he filed an RCE on July 26, 2010, he should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on December 28, 2010 until the issue date of the patent. In other words, Patentee argue that no continued examination took place during this time period, and the Office should be accorded 127 additional days of delay pursuant to 37 CFR 1.703(b). Patentee's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(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);
>
> (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.

The implementing regulation, 37 CFR 1.702(b) provides that:

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:

> (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.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 553 days based on the application having been filed under 35 U.S.C. 111(a) on January 13, 2006 and a request for continued examination under 132(b) having been filed on July 26, 2010. In other

words, the 127 day period beginning on the date of mailing of the notice of allowance on December 28, 2010 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered 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. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment 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 number of days 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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "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," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (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), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than

three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)2. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "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." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "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" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

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[2] Clause (iii) provides for not including (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. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures3 permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on July 26, 2010, and the patent issued by virtue of that request on May 3, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on July 26, 2010 and ending on May 3, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 1179 days indicated on the patent is correct.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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AUG 27 2010
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In re Patent of Blokpoel :
Patent No. 7,636,978 :
Issue Date: December 29, 2009 :
Application No. 10/564,730 :
Filing Date: June 22, 2006 :
Attorney Docket No. 097298-0114 :

DECISION ON REQUEST
FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT

This is a decision on the petition filed on May 20, 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 four hundred forty-five (454) days. The petition was timely filed within one month of the mailing of a Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction, mailed April 21, 2010.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred fifty-four (454) days is **granted to the extent indicated herein**.

Patentee argues that the Office failed to properly calculate the B delay period. Patentee argues that B delay period is 346 days and that no period should be excluded from the B delay period.

The Office concurs that the maximum potential B delay period is 346 days, the period beginning on January 18, 2009, the day after three years after the application's commencement date, and ending on December 29, 2009, when the patent issued. However, a period of 13 days is excluded from the B delay period as time consumed by appellate review.

Pursuant to 35 U.S.C. § 154(b)(1)(B)(ii), B Delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." Patentee argues the period of appellate review does not begin until jurisdiction is transferred to the Board of Patent Appeals and Interferences ("Board") pursuant to 37 C.F.R. § 41.35.

The provisions of 37 C.F.R. § 1.703(b)(4) implement 35 U.S.C. § 154(b)(1)(B)(ii). Pursuant to 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include,

> 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.

The petition asserts no reduction under 37 C.F.R. § 1.703(b)(4) is warranted because " ... the application was never remanded to the Board of Patent Appeals and Interferences, and there was no ' time consumed by appellate review of the Board of Patent Appeals and Interferences.' "

Although the petition asserts the period of appellate review begins when jurisdiction is transferred to the Board, the petition fails to cite any court decision or legislative history to support such an assertion.

The Office has considered the arguments in the petition and concluded the phrase "time consumed by appellate review by the Board" in 35 U.S.C. § 154(b)(1)(B)(ii) begins when a notice of appeal is filed.

The phrase "appellate review by the Board" appears twice in 35 U.S.C. § 154(b). The fact the identical phrase is used in another location in the same statute is relevant because "identical words used in different parts of the same statute are ... presumed to have the same meaning." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

Pursuant to 35 U.S.C. § 154(b)(1)(C)(iii), successful "appellate review by the Board" will result in an adjustment for delay resulting from the appeal. The Office has interpreted 35 U.S.C. § 154(b)(1)(C)(iii) to provide for an adjustment based on delay beginning when a notice of appeal has been filed. 37 C.F.R. § 1.703(e) states, with emphasis added,

> The period of adjustment under § 1.702(e) is the sum of 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 a final decision in favor of the applicant 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.

The Office's interpretation of 35 U.S.C. § 154(b)(1)(C)(iii) is supported by language in 35 U.S.C. § 154(b) prior to passage of the Patent Term Guarantee Act of 1999, Pub. L. No. 106-113, § 4402, 113 Stat. 1501A-557. Prior to passage of the Patent Term Guarantee Act of 1999, 35 U.S.C. §§ 154(b)(2)-(3) stated, with emphasis added,

> Extension for *appellate review*. If the issue of a patent is delayed due to *appellate review* by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of

> patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years....
>
> The period of extension ... shall include any period *beginning on the date on which an appeal is filed under section 134 or 141 of this title*, or on which an action is commenced under section 145 of this title, and ending on the date of a final decision in favor of the applicant.

As shown by the language quoted above, the period of appellate review in the former version of 35 U.S.C. § 154(b) began when a notice of appeal was filed. When Congress passed the Patent Term Guarantee Act of 1999, Congress failed to take any action to indicate Congress wished to change the starting date for the period of "appellate review" from the date a notice of appeal is filed until the date the application file is transferred to the Board.

In view of the prior discussion, the Office has reasonably concluded the period of "appellate review by the Board" under 35 U.S.C. § 154(b)(1)(C)(iii) begins when a notice of appeal is filed. Since identical words or phrases in the same statute are presumed to have the same meaning, the Office asserts the period of "appellate review" under 35 U.S.C. § 154(b)(1)(B)(ii) also begins when a notice of appeal is filed. The Office recognizes the presumption the same word or phrase in a statue has the same meaning is rebuttable. *See Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 575-76 (2007). However, the context of each instance of the phrase in the statute at issue fails to clearly indicate Congress intended for the same phrase to have two different meanings.

The Office has considered the arguments in the petition and determined the petition fails to establish the provisions of 37 C.F.R. § 1.702(b)(4) are inconsistent with the provisions of 35 U.S.C. § 154(b)(1)(B)(ii). Pursuant to 37 C.F.R. § 1.702(b)(4), the time period excluded from delay under 37 C.F.R. § 1.702(b) begins when a notice of appeal is filed. In other words, the appellate review period excluded from the period of B Delay begins when a notice of appeal is filed.

In this case, the period of appellate review began when a notice of appeal was filed on November 20, 2008, and ended on January 30, 2009, when a non-final Office action was mailed. The time consumed by the period of appellate review was 13 days. Therefore, the Office properly excluded 13 days from the period of B Delay as a result of time consumed by appellate review. The B delay period is 333 (346 – 13) days.

In light thereof, the correct patent term adjustment is **445 days**, which is the sum of 122 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 333 days of B Delay and reduced by 10 days for 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.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). This fee is required and will not be refunded.

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 **four hundred forty-five (445)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,636,978 B2

DATED : **December 29, 2009** **DRAFT**

INVENTOR(S) : Blokpoel

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 U.S.C. 154(b) by 336 days

Delete the phrase "by 336 days" and insert – by 445 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
FEB 11 2011
OFFICE OF PETITIONS

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:
Gardella et al.	: DECISION ON APPLICATION
Application Number: 10/564,744	: FOR PATENT TERM ADJUSTMENT
Filing Date: 03/03/2006	:
Attorney Docket Number:	:
00786/540002	:

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed on October 8, 2010, which is treated as a petition under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. § 154(b) be increased by 104 days from 259 days to 363 days.

The application for patent term adjustment is **GRANTED** to the extent indicated.

The Office has updated the PALM and PAIR screens to reflect that the revised Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is three hundred forty-nine (349) days. A copy of the updated PAIR screen, showing the revised determination, is enclosed.

On July 13, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 259 days (451 days of Office delay reduced by 192 days of applicant delay). The subject application for patent term adjustment was timely filed on October 8, 2010.[1]

[1] PALM records show that the Issue Fee was received on October 8, 2010.

Applicants dispute the reductions of 14 and 92 days, respectively, for the filing of supplemental responses, (in this case, Information Disclosure Statements (IDSs)) on July 20, 2009, 14 days after the filing of a reply on July 6, 2009, and on June 22, 2010, 92 days after the filing of a reply on March 24, 2010.

Applicants assert that the IDSs are accompanied by the statement in accordance with 37 CFR 1.704(d) and, therefore, should not be considered failures to engage in reasonable efforts to conclude processing or examination. Further, the present petition is accompanied by a statement under 37 CFR 1.704(d).

37 CFR 1.704(c)(8) states:

> 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.

37 CFR 1.704(d) states:

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

A review of the record reveals that on July 20, 2009, an IDS was filed, 14 days after the day after the date a reply was filed, July 6, 2009, in response to an Office action. The IDS was not accompanied by the statement set forth at 37 CFR 1.704(d).

Applicants' argument that the 14 day period of reduction for applicant delay should be removed is unavailing. It is undisputed that the IDS was not accompanied by the statement set forth under § 1.704(d). Further, there is no provision in the rules for the Office to accept a statement under § 1.704(d) which did not accompany (*i.e.*, was not filed contemporaneously with) the IDS. Accordingly, the reduction of 14 days is proper and will not be removed.

With regard to the supplemental IDS filed on June 22, 2010, a review of the record reveals that a statement in accordance with § 1.704(d) has been provided in the transmittal letter accompanying the IDS. Accordingly, the period of reduction of 92 days is not warranted and will be removed.

Applicants further disclose that a period of two (2) days of reduction for applicant delay should be entered for the filing of a supplemental response on March 24, 2010, two (2) days after the filing of a reply on March 22, 2010.

Upon review, applicants' argument is well taken. On March 22, 2010, a reply to an Office action was filed. On March 24, 2010, a supplemental reply in the form of an IDS was filed, two (2) days after a reply was filed. The IDS was not accompanied by the statement set forth in § 1.704(d). Accordingly a two (2) day reduction for applicant delay is warranted pursuant to 37 CFR 1.704(c)(8).

In view thereof, the determination of PTA at the time of the mailing of the Notice of Allowance is updated to 349 days (451 days of PTO delay, reduced by 102 days (61 + 14 + 25 + 2) days of Applicant delay).

The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

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

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 the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Revised PAIR Calculation

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/564,744

Filing or 371(c) Date:	03-03-2006	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	451
A Delays:	451	PTO Manual Adjustments:	90
B Delays:	0	Applicant Delays:	192
C Delays:	0	Total PTA Adjustments:	349

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO(Days)	APPL (Days)	Start
99	02-09-2011	Adjustment of PTA Calculation by PTO		2	0
98	02-09-2011	Adjustment of PTA Calculation by PTO	92		0
72	07-13-2010	Mail Notice of Allowance			0
71	07-06-2010	Issue Revision Completed			0
70	07-06-2010	Document Verification			0
69	07-06-2010	Notice of Allowance Data Verification Completed			0
68	07-06-2010	Examiner's Amendment Communication			0
67	07-06-2010	Notice of Allowability			0
63	06-22-2010	Information Disclosure Statement considered			0
62	03-24-2010	Information Disclosure Statement considered			0
61	06-22-2010	Information Disclosure Statement (IDS) Filed		92	56
60	06-22-2010	Information Disclosure Statement (IDS) Filed			0
59	03-24-2010	Reference capture on IDS			0
58	03-24-2010	Information Disclosure Statement (IDS) Filed			0
57	04-13-2010	Date Forwarded to Examiner			0
56	03-22-2010	Response after Non-Final Action		25	51
55	03-22-2010	Request for Extension of Time - Granted			0
54	03-24-2010	Information Disclosure Statement (IDS) Filed			0
53	11-25-2009	Electronic Review			0
52	11-25-2009	Email Notification			0
51	11-25-2009	Mail Non-Final Rejection	19		43
50	11-23-2009	Non-Final Rejection			0
49	07-06-2009	Information Disclosure Statement considered			0
48	07-20-2009	Information Disclosure Statement considered			0
47	07-20-2009	Information Disclosure Statement (IDS) Filed		14	43
46	07-06-2009	Reference capture on IDS			0
45	07-06-2009	Information Disclosure Statement (IDS) Filed			0
44	09-10-2009	Date Forwarded to Examiner			0
43	07-06-2009	Response after Non-Final Action		61	36
42	07-06-2009	Request for Extension of Time - Granted			0
41	07-20-2009	Information Disclosure Statement (IDS) Filed			0
40	07-06-2009	Information Disclosure Statement (IDS) Filed			0
38	02-06-2009	Electronic Review			0
37	02-06-2009	Email Notification			0
36	02-06-2009	Mail Non-Final Rejection	13		32
35	02-02-2009	Non-Final Rejection			0
34	11-29-2007	Information Disclosure Statement considered			0
33	10-29-2008	Date Forwarded to Examiner			0
32	09-24-2008	Response to Election / Restriction Filed			0
31	09-24-2008	Request for Extension of Time - Granted			0
29	08-15-2008	Mail Post Card			0

28	08-07-2008	Email Notification		0
27	07-21-2008	Mail Supplemental Restriction / Election Requirement		0
26	07-17-2008	Supplemental Restriction		0
25	06-26-2008	Electronic Review		0
24	06-25-2008	Email Notification		0
23	06-25-2008	Mail Restriction Requirement	419	9
22	06-23-2008	Requirement for Restriction / Election		0
20	04-15-2008	Email Notification		0
19	04-15-2008	Change in Power of Attorney (May Include Associate POA)		0
18	04-09-2008	Correspondence Address Change		0
17	11-29-2007	Reference capture on IDS		0
16	11-29-2007	Information Disclosure Statement (IDS) Filed		0
15	11-29-2007	Information Disclosure Statement (IDS) Filed		0
14	11-06-2007	Case Docketed to Examiner in GAU		0
13	10-29-2007	IFW TSS Processing by Tech Center Complete		0
11	08-30-2007	PG-Pub Issue Notification		0
10	06-05-2007	Application Dispatched from OIPE		0
9	03-03-2006	371 Completion Date		0
8	05-17-2007	Sent to Classification Contractor		0
7	05-17-2007	Notice of DO/EO Acceptance Mailed		0
6	10-31-2006	CRF Is Good Technically / Entered into Database		0
5	04-20-2006	Preliminary Amendment		0

Close Window

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Paper No.

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

MAILED
JUN 24 2011
OFFICE OF PETITIONS

In re Patent No. 7,910,544	:	
Gardella et al.	:	DECISION ON APPLICATION
Issue Date: 03/22/2011	:	FOR PATENT TERM ADJUSTMENT
Application No. 10/564,744	:	AND
Filed: 03/03/2006	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No.	:	CERTIFICATE OF CORRECTION
00786/540002	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed on May 19, 2011, which is treated as a petition under 37 CFR 1.705(d). Patentees request that the Patent Term Adjustment for the above-identified patent be set at 971 days. For the reasons stated below, the petition is 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 nine hundred seventy (970) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated**.

On March 22, 2011, the above-identified application matured into U.S. Patent No. 7,910,544. The instant request for reconsideration filed on May 19, 2011, 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 930 days.

Patentees contend that that the 61 day reduction in patent term adjustment for the filing of a request under 37 CFR 1.48(a) after the mailing of the notice of allowance is incorrect. Patentees contend that the period of reduction for the filing of the request under 37 CFR 1.48(a) should be 20 days rather than 61 days.

Patentees' contention is persuasive, to the point indicated.

37 CFR 1.704 states, in pertinent part:

> (c) 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:
>
> ...
>
> (10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, **beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper**; or
>
> (ii) Four months; and
>
> ...
>
> (emphasis added)

Accordingly, applicant delay is calculated as the lesser of the number of days between the date (not the day after the date) the amendment under 37 CFR 1.312 is filed, and the date the Office mails a communication in response to the amendment under 37 CFR 1.312, or four (4) months.

A review of the record reveals that on September 15, 2010, an amendment or other paper (i.e., request under 37 CFR 1.48(a)) after the mailing of the notice of allowance was filed. A paper in response to the amendment or other paper filed after the mailing of the notice of allowance was mailed on October 5, 2010, 21 days (not 20 days) after the date the amendment after the mailing of the notice of allowance was filed. The 61 day

period of reduction for applicant delay will be removed and a 21 day period of reduction will be entered.

The patent term adjustment at the time of issuance of the patent is 970 days (493 days of Office delay + 794 days of three years delay - 74 overlapping days - 243 (61 + 14 + 25 + 61 + 120 + 2)) days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The 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 nine hundred seventy **(970)** days.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,910,544 B2

DATED : **Mar. 22, 2011** **DRAFT**

INVENTOR(S) : Gardella 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 930 days.

Delete the phrase "by 930 days" and insert – by 970 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Date Mailed : February 8, 2012

Patent No. : 7,910,544 B2
Patent Issued : March 22, 2011
Docket No. : 00786/540002
Re: Request for Certificate of Correction

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

The alleged error(s) Sequence listing could not be accepted due to errors in computer readable form. the patent is printed in accordance with the record .In view of the foregoing, your request, in this matter(s), is hereby denied.

Further consideration/reconsideration will be given upon receipt of a Request for Reconsideration under, under the provision of U.SC.254 or 255 (C.F.R. 1.322 or 1.323), accompanied by the appropriate response or fee of $100, which should be directed to Decisions & Certificates of Correction Branch.

Ennis Young
Legal Instrument Examiner
(571) 272-3435

For Mary Diggs, Supervisor
Decisions & Certificates of Correction Branch
(703) 756-1580 or (703) 756-1814 (Receptionist)

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date : September 23,2011

In re Application of :

Yasushi Inagaki

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10564856

Filed : 17-Jan-2006

Attorney Docket No : 283026US90PCT

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed September 23,201,1to 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 in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2835 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	10564856
Filing Date	17-Jan-2006
First Named Inventor	Yasushi Inagaki
Art Unit	2835
Examiner Name	ISHWARBHAI PATEL
Attorney Docket Number	283026US90PCT
Title	MULTILAYER PRINTED WIRING BOARD

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

○ One or more claims are unpatentable

◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)

○ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).

RCE request,submission, and fee.

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on

☒ Are attached.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Akihiro Yamazaki/
Name	Akihiro Yamazaki
Registration Number	46155

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 07/01/11

TO SPE OF : ART UNIT 1654

SUBJECT : Request for Certificate of Correction for Appl. No.: 10564861 Patent No.: 7612032

CofC mailroom date: 06/21/11

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
[redacted]

Note: **Should Claims be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

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 RESPONSE FOR CERTIFICATE OF CORRECTION

/Cecilia Tsang/ SPE, Art Unit 1654

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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JEROLD I. SCHNEIDER
515 N. FLAGLER DRIVE
6TH FLOOR
WEST PALM BECAH, FL 33401

MAILED
JUL 06 2011
OFFICE OF PETITIONS

In re Application of :
Philippe Ceulemans et al :
Application No. 10/564,927 : ON PETITION
Filed: February 26, 2008 :
Attorney Docket No. 4021-9US :

This is a decision on the petition filed June 14, 2011 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication Fee in a timely manner in reply to the Notice of Allowance mailed February 16, 2011, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on May 17, 2011.

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; (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 Office of Data Management 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
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JOSEPH S. TRIPOLI
THOMSON LICENSING INC.
PATENT OPERATIONS
PO BOX 5312
PRINCETON NJ 08543-5312

MAILED

AUG 12 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Jean-Jacques SACRE, et al :
Application No. 10/564,987 :
Filed: July 14, 2006 :
Attorney Docket No. PF030118 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 24, 2010, 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 4, 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 March 5, 2010.

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 $1620; and (3) a proper 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 2872 for further processing in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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RATINGEN 40837 DE GERMANY

MAILED
SEP 26 2011
OFFICE OF PETITIONS

In re Application of	:	
Bayer, et al.	:	
Application No. 10/565,037	:	ON PETITION
Filed: January 18, 2006	:	
Attorney Docket No. 710.1037	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed September 19, 2011.

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

The above application became abandoned for failure to timely file a reply in response to the non-final Office action, mailed March 17, 2010. This Office action set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on June 18, 2010.

With the instant petition, applicants made the proper statement of unintentional delay, paid the petition fee, and filed an Amendment.

The application is being forwarded to Group Art Unit 3726 for consideration of the Amendment, filed September 19, 2011.

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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,052	07/31/2006	Kai Dolling	MULLER53	7156

39703 7590 01/18/2011
C. JAMES BUSHMAN
5851 San Felipe
SUITE 975
HOUSTON, TX 77057

EXAMINER
RUMP, RICHARD M

ART UNIT	PAPER NUMBER
1793	

MAIL DATE	DELIVERY MODE
01/18/2011	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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110113

DATE : January 13, 2011

TO SPE OF : ART UNIT 1736

SUBJECT : Request for Certificate of Correction on Patent No.: 7790139

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:

As the drawings do not effect the scope of the specification or claims, they are deemed satisify USC 255.
Correction of text is also approved.

/Stanley Silverman/
Supervisory Patent Examiner, Art Unit 1736

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

DEC 16 2010

OFFICE OF PETITIONS

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

In re Patent No. 7,829,525	:	
Issued: November 9, 2010	:	
Application No. 10/565,111	:	NOTICE
Filed: February 19, 2007	:	
Attorney Docket No.: DEBE:063US/ 10513682	:	

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

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

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

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No.

BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON DC 20005-4051

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Patent No. 7,709,009	:	DECISION ON REQUEST
Grandi	:	FOR
Issue Date: May 4, 2010	:	RECONSIDERATION OF
Application No. 10/565,126	:	PATENT TERM ADJUSTMENT
Filed: September 18, 2006	:	and
Atty Docket No. 002441.00187	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition pursuant to 37 C.F.R. § 1.705(d), filed on June 24, 2010, 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 and four (704) 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 six hundred and twenty-eight (628) days is **GRANTED to the extent indicated herein.**

The record supports a conclusion that this patent is not subject to a terminal disclaimer.

This patent issued on May 4, 2010, with a patent term adjustment of 635 days.

The Office has determined that the patent term adjustment for the above-identified patent is **628 days**.

The 371 acceptance letter (M903), mailed on December 18, 2006, indicates that the fulfillment date (the date of completion of all 35 U.S.C. § 371 requirements) is September 18, 2006 and the priority date is July 31, 2003.

37 C.F.R. § 1.703(a)(1) states that the term of an original patent shall be adjusted by:

> [t]he 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…

This application fulfilled the requirements of 35 U.S.C. 371 in an international application on September 18, 2006, and a restriction requirement was mailed 14 months and 246 days later on July 21, 2008, resulting in 246 days of examination delay, pursuant to 37 C.F.R. § 1.703(a)(1).

37 C.F.R. § 1.703(a)(2) states that the term of an original patent shall be adjusted by:

> 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…

A response to the aforementioned restriction requirement was received on September 22, 2008, and a non-final office action was mailed four months and 106 days later on May 8, 2009, resulting in 106 days of examination delay, pursuant to 37 C.F.R. § 1.703(a)(2).

It follows that the examination delay totals 352 (246 + 106) days. It is noted that the Office delay did not properly account for the aforementioned 106-day period of examination delay, and instead used a period of 9 days.

37 C.F.R. § 1.704(c)(10) states that the term of the original patent will be reduced due to the:

> [s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
> (ii) Four months…

A notice of allowance was mailed on November 16, 2009. On February 16, 2010, Patentee submitted an after-final amendment. Eight days later, the Office mailed a "Response to Rule 312 Communication" on February 24, 2010. This warrants a reduction of nine days pursuant to 37 C.F.R. § 1.703(4)(c)(10)(i), as the day on which the supplemental response was received is included in the period of delay. It is noted that the Office did not properly account for this 9-day period of applicant delay, and instead used a period of two days.

Similarly, on February 18, 2010, Patentee submitted six sheets of replacement drawings. Seventy-five days later, this application matured into U.S. Patent no. 7,703,009 on May 4, 2010. This warrants a reduction of 76 days pursuant to 37 C.F.R. § 1.703(4)(c)(10)(i), as the day on which the supplemental response was received is included in the period of delay.

It follows that the applicant delay totals 85 (9 + 76) days.

This patent issued three years and 458 days after the 30-month anniversary of the priority date (January 31, 2006). However, the B-delay does not total 458 days, due to 97 days of overlap: regarding the aforementioned 106 days of examination delay which runs from January 22, 2009 to May 8, 2009, the period between January 31, 2009 and May 8, 2009 overlaps with the period of B-delay. This period totals 97 days.

It follows that the B-delay totals 361 (458 minus the 97 days of overlap) days.

As such, the patent term adjustment is increased by 628 (352 days of examination delay plus 361 "B-delay" minus 85 days of Applicant delay) days, not 704 days.

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

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or Patentee an opportunity to be heard. Accordingly, 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.

This patent 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 **six hundred and twenty-eight (628) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,709,009 B2

DATED : **May 4, 2010** **DRAFT**

INVENTOR(S) : Grandi

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 635 days

Delete the phrase "by 635 days" and insert – by 628 days--

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JAN 05 2011

PCT LEGAL ADMINISTRATION

Martin Faier
Faier & Faier
566 W Adams Street #600
Chicago IL 60661

In re Application of	:	
COCHRANE	:	
U.S. Application No. 10/565,227	:	
PCT No.: PCT/GB2004/003257	:	
Int. Filing Date: 26 July 2004	:	DECISION ON PETITIONS
Priority Date: 24 July 2003	:	(37 CFR 1.182)
Attorney Docket No.: BWT12106	:	(37 CFR 1.181)
For: VERTICAL AXIS WIND TURBINE	:	

This decision is issued in response to applicant's "Petition under 37 CFR 1.182" filed 03 September 2010 in the United States Patent and Trademark Office (USPTO) that seeks to correct the international application number on the national stage application papers filed 21 January 2006 so as to allow such materials to be treated as the U.S. national stage of PCT/GB2004/003257 and to withdraw the holding of abandonment in this application.

BACKGROUND

On 26 July 2004, applicant filed international application PCT/GB2004/003257, which claimed a priority date of 24 July 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 24 January 2006.

On 21 January 2006, applicant filed a U.S. national stage application that included, among other materials, payment of the U.S. basic national fee. The submission was assigned U.S. application number 10/565,227.

The materials filed 21 January 2006 included a PTO-1390 transmittal letter which identified the application as a U.S. national stage of PCT/GB2004/003527, filed 26 July 2004. Applicant's English translation of the international application / specification identified the application as a U.S. national stage of PCT/GB2004/003257. Thus, applicant's 21 January 2006 filing included conflicting instruction that identified the submission as a U.S. national stage of two different international applications: PCT/GB2004/003527 and PCT/GB2004/003257.

Based on United States Patent and Trademark Office (USPTO) processing procedures, the application file was initiated in the USPTO PALM system as a U.S. national of PCT/GB2004/003527, the international application number set forth in the

PTO-1390 transmittal letter.

On 15 May 2006, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date and payment of $75 in additional claims fees. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 24 May 2006, applicant responded with payment of the additional $75.00.

On 02 May 2007, applicant was mailed a "Notification of Defective Response" (Form PCT/DO/EO/916) instructing applicant that an oath or declaration of the inventors was still required. In addition, applicant was informed for the first time that a payment of $65.00 was required asa surcharge for the late filing of an executed oath or declaration and that a copy of the sequence listing in computer readable form was required. Applicant was further advised that this period was not extendable but that the period set in the Form PCT/DO/EO/905 mailed 07 January 2010 could be extended pursuant to 37 CFR 1.136(a).

On 01 June 2007, applicant responded with an executed declaration of the inventor and payment of the appropriate surcharge.

On 21 August 2007, applicant was mailed a second Form PCT/DO/EO/916 advising applicant of the need to provide a copy of the sequence listing in computer readable form.

On 30 July 2010, applicant was mailed a "Notice of Abandonment Under 37 CFR 1.53(f) or (g) advising applicant that the present application was abandoned for failure to respond to the Form PCT/DO/EO/905 mailed 15 May 2006.

On 02 August 2010, applicant was mailed a second "Notice of Abandonment Under 37 CFR 1.53(f) or (g) advising applicant that the present application was abandoned for failure to respond to the Form PCT/DO/EO/905 mailed 15 May 2006.

On 03 September 2010, applicant filed a petition under 37 CFR 1.182 to correct the bibliographic data error and request for withdrawal of the holding of abandonment.

DISCUSSION

As noted above, the bibliographical data provided by applicant incorrectly identified the international application to which the submission was directed. Correction of this error is required before the materials filed 11 September 2008 can be treated as having been directed to international application PCT/GB2004/003257, as necessary to avoid abandonment of the international application with respect to the United States.

I. Petition Under 37 CFR 1.182

In the present petition filed 03 September 2010, applicant confirms that the listing of international application PCT/GB2004/003527 set forth in the Form PTO-1390 provided by applicant was the result of an error, and that the correct international application is PCT/GB2004/003257. It is noted that the correct international application number was listed on the specification filed 21 January 2006. The present petition is accompanied by payment of the required petition fee and properly identifies the application as the national stage of PCT/GB2004/003257. These materials satisfy the requirements for a grantable petition to correct the error in the bibliographical data filed 21 January 2006 and to permit such materials to be treated as having been directed to international application PCT/GB2004/003257.

II. Petition Under 37 CFR 1.181

A review of the application record finds that the Forms PTO/DO/EO/916 mailed 02 May 2007 and 21 August 2007 contained errors in requesting elements not relevant to the present application and items which were not properly listed on the Form PTO/DO/EO/905 mailed 15 May 2006. In addition, the notices of abandonment mailed 30 July 2010 and 02 August 2010 were not appropriate for a U.S. national stage filing under 35 U.S.C. 371. Applicant has to date satisfied all of the elements required for entry into the U.S. national stage. As such, it is proper to grant applicant's petition for withdrawal of the holding of abandonment in this case.

CONCLUSION

Applicant's petitions under 37 CFR 1.182 and 37 CFR 1.181 are GRANTED.

The materials filed 21 January 2006 have been assigned U.S. application number 10/565,227 and will be treated as the national stage of PCT/GB2004/003257.

The Forms PTO/DO/EO/916 mailed 02 May 2007 and 21 August 2007 and the notices of abandonment mailed 30 July 2010 and 02 August 2010 are hereby VACATED.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision.

Derek A. Putonen
Attorney-Advisor
Office of PCT Legal Administration
Tel.: 571-272-3294

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUL 26 2011

PCT LEGAL ADMINISTRATION

Martin Faier
Faier & Faier
566 W Adams Street #600
Chicago IL 60661

In re Application of	:	
COCHRANE	:	
U.S. Application No. 10/565,227	:	
PCT No.: PCT/GB2004/003257	:	
Int. Filing Date: 26 July 2004	:	DECISION ON PETITION
Priority Date: 24 July 2003	:	37 CFR 1.181
Attorney Docket No.: BWT12106	:	
For: VERTICAL AXIS WIND TURBINE	:	

This decision is issued in response to applicant's requests filed on 10 and 28 February 2011 in the United States Patent and Trademark Office (USPTO). The requests are being treated under 37 CFR 1.181 and are **GRANTED**.

On 05 January 2011 applicant was mailed a decision granting applicant's petition under 37 CFR 1.182 to have the materials filed 21 January 2006 and assigned U.S. application number 10/565,227 treated as the national stage of PCT/GB2004/003257.

On 18 January 2011 and 23 February 2011 applicant was mailed Forms PCT/DO/EO/922 requesting a copy of a sequence listing in computer readable form.

As applicant points out in the present filings, the present application "vertical axis wind turbine" does not contain any subject matter which would require a sequence listing.

The Forms PTO/DO/EO/922 mailed 18 January 2011 and 23 February 2011 are hereby VACATED.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision.

Derek A. Putonen
Attorney-Advisor
Office of PCT Legal Administration
Tel: 571-272-3294

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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FENNIGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of :
Fabrizio DONAZZI ET AL :
Application No. 10/565,299 : DECISION ON PETITION
Filed: July 12 2006 :
Attorney Docket No. 09875.0359 :

This is a decision on the petition under 37 CFR 1.59(b), filed November 29, 2010, to expunge information from the above identified application.

The petition is **DISMISSED**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.59(b)." This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

Petitioner requests that a document identified as an Oath or Declaration, filed November 29, 2010, be expunged from the record. The petition fee required under 37 CFR 1.17(g) has been received. Petitioner indicates that the filing was an inadvertent error and represents a privileged correspondence.

The petition is deficient because (1) the petition does not contain a clear statement that the information requested to be expunged was unintentionally submitted and failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, (2) the petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the period of any patent with regard to which such information is submitted, and (3) a statement that the information has not otherwise been made public.

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

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

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

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

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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EGBERT LAW OFFICES
412 MAIN STREET, 7TH FLOOR
HOUSTON TX 77002

MAILED

MAR 25 2011

OFFICE OF PETITIONS

In re Application of

Rios, et al. :

Application No. 10/565,309

: DECISION ON PETITION

Filed: September 19, 2006

:

Attorney Docket No. 900090

This is a decision on the petition under 37 CFR 1.137(b), filed February 10, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 29, 2010, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on June 20, 2010. A Notice of Abandonment was mailed November 19, 2010.

The amendment filed February 10, 2011, is noted.

The application is being forwarded to Technology Center 1600, GAU 1614 for further processing.

Telephone inquiries concerning this decision 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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P.O. Box 1450
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MAY 06 2011

PCT LEGAL ADMINISTRATION

Omnova Solutions
175 Ghent Road
Fairlawn, OH 44333-3300

In re Application of		
SIZER et al.	:	
Application No.: 10/565,402	:	
PCT No.: PCT/US2004/022892	:	
Int. Filing Date: 15 July 2004	:	DECISION
Priority Date: 22 July 2003	:	
Atty. Docket No.: 010335WOJZFOMNZ . . .	:	
For: BASE-COAT IN-MOLD COATING	:	

This decision is issued in response to applicants' "Requests for Recognition as Representative, Corrected Filing Receipt and Corrected (35 U.S.C.) 371 Acceptance Letter" filed on 01 June 2010.

BACKGROUND

On 23 January 2006, applicants filed a Transmittal Letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, *among others*, the requisite basic national fee; a copy of the international application; and a preliminary amendment.

In response to the Notification of Missing Requirements dated 24 July 2006, applicants filed an executed declaration of inventors on 11 September 2006.

On 26 May 2010, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification of Acceptance of Application under 35 U.S.C. 371 AND 37 CFR 1.495" (Form PCT/DO/EO/903) which set forth the date of receipt 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) requirements as 11 September 2006 and a 35 U.S.C. 371 completion date of 23 May 2010.

On 01 June 2010, applicants filed "Requests for Recognition as Representative, Corrected Filing Receipt and Corrected (35 U.S.C.) 371 Acceptance Letter" considered herein.

DISCUSSION

Applicants request that the date of completion of all 35 U.S.C. 371 requirements on the Notification of Acceptance of Application under 35 U.S.C. 371 AND 37 CFR 1.495 should be corrected to 11 September 2006. The Notification of Acceptance of Application

under 35 U.S.C. 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) indicates the date of receipt of the 37 U.S.C. 371 (c)(1), (c)(2), and (c)(4) requirements and it also indicates the date of completion of all 35 U.S.C. 371 requirements. Here, applicants submitted an executed declaration on 11 September 2006, which is the date set forth in 35 U.S.C. 371(c)(1), (c)(2), and (c)(4). Accordingly, the Notification of Acceptance will indicate 11 September 2006 as the date that the all 35 U.S.C. 371 requirements were met.[1] Therefore, the correction of the Notification of Acceptance to indicate a "Date of Completion of all 35 U.S.C. 371 Requirements" of 11 September 2006 is proper.

CONCLUSION

Applicants' request under 37 CFR 1.181 for issuance of a corrected Notification of Acceptance is GRANTED.

The Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt mailed 26 May 2010 are hereby VACATED.

The National Stage Processing Branch of the International Division will be instructed to issue a corrected Notification Of Acceptance (Form PCT/DO/EO/903) identifying the 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date as 11 September 2006 and a date of completion of all 35 U.S.C. 371 requirements as 11 September 2006. Additionally, a corrected Official Filing Receipt will be issued.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: 571-272-3298
Facsimile: 571-273-0459

---

[1]As discussed in MPEP §1893.03(b), the "Date Of Completion Of all 35 U.S.C. 371 Requirements" listed on the Notification Of Acceptance is not necessarily the same date as the date of receipt of the requirements of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4). Rather, the MPEP sets forth the following criteria for determining the correct "Date Of Completion Of All 35 U.S.C. 371 Requirements:" In this application, the "Date of Completion of all 35 U.S.C. 371 Requirements" included on the NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) is ...(B) the latest of the date of submission of an oath or declaration of the inventor in compliance with 35 U.S.C. 371 (c)(4).

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MAILED
JUN 27 2011
OFFICE OF PETITIONS

OMNOVA SOLUTIONS
175 GHENT ROAD
FAIRLAWN OH 44333-3300

In re Application	:	
Sizer, et al.	:	
Application No. 10/565,402	:	DECISION ON APPLICATION
Filed: September 11, 2006	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 010335USJZFOMNZ 200052US01	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B)" filed May 10, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days one thousand five hundred fifty-three (1053) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand fifty-three (1053) days.**

On February 24, 2011, 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 zero (0) days. On May 10, 2011, Applicants timely[1] submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one thousand fifty-three (1053) days.

---

[1] Applicants filed the application for patent term adjustment prior to the payment of the issue fee.

Applicants assert entitlement to a patent term adjustment of one thousand fifty-three (1053) days on the basis that the PTO should have been assessed delay of one thousand fifty-five (1055) days for not mailing an Office action within fourteen months of September 11, 2006, the date of completion of all 35 USC 371 requirements.

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

35 USC 371 requirements were completed on September 11, 2006. Pursuant to 37 C.F.R. § 1.702(a)(1), the Office had until November 11, 2006 to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. The Office mailed an Office action on October 1, 2010. Accordingly, under 37 C.F.R. § 1.703(a)(1), PTO delay of one thousand fifty-five (1055) days should have been assessed.

However, a review of the file reveals that Applicant delay also should have been assessed pursuant to 37 CFR 1.704(b). Subsequent to the Office mailing an Office action on October 1, 2010, Applicants filed a reply on January 1, 2011. Accordingly, pursuant to 37 CFR 1.704(b), two (2) days of Applicant delay should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one thousand fifty-three (1053) days** (1055 days of PTO delay reduced by 2 days of applicant delay).

Receipt of the $200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for processing into a patent.

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

Cliff

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APR 19 2011

OFFICE OF PETITIONS

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

In re Patent No. 7,713,452	:	
Issue Date: May 11, 2010	:	
Application No. 10/565,414	:	ON PETITION
Filed: January 23, 2006	:	
Attorney Docket No. ESSR:103US/10600581	:	

This is a decision on the petition filed February 7, 2011, 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) 272-2991. 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.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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220 MASSACHUSETTS AVENUE
CAMBRIDGE MA 02139

MAILED

OCT 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,754,726	: DECISION ON REQUEST
Lang et al.	: FOR
Issue Date: 07/13/2010	: RECONSIDERATION OF
Application No. 10/565,452	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 05/05/2006	:
Atty Docket No.	:
34056-US-PCT	:

This is a decision on the petition filed on June 30, 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 six hundred forty-six (646) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of seven hundred forty-six (746) days.

The priority date in this application is July 25, 2003. Applicants did not file an express request under 35 U.S.C. 371(f). Accordingly, the date the application commenced the national stage under 35 U.S.C. 371(b) is January 25, 2006, the date which is 30 months from the priority date.

As to the "B" delay period, the over three year period begins on January 26, 2009, the day after the date three years after the date the application commenced the national stage under 35 U.S.C. 371(b), and ends on the date the patent issued, July 13, 2010, and is 534 days.

Accordingly, no change will be made to the patent term adjustment of 746 (316 days Office delay + 536 days three years delay – 104 days of applicant delay) days indicated on the face of the issued patent.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The 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) 272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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CONCORD, MA 01742-9133

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SEP 03 2010
OFFICE OF PETITIONS

In re Application of	:	
Bipin S. Parekh, et al.	:	
Application No. 10/565,486	:	DECISION GRANTING PETITION
Filed: may 4, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 31941033013	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 2, 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 July 28, 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 concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1797 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
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.*

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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 RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: DEKK3001/REF	Patent Number: 7663000
Filing Date (or 371(b) or (f) Date): 2006-10-02	Issue Date: 2010-02-16
First Named Inventor: David Walterus Cornelius Dekkers	
Title: QUINONEIMINES OF MALONIC ACID DIAMIDES	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /ThomasJMoore/	Date 2010-08-12
Name (Print/Typed) Thomas J. Moore	Registration Number 28974

***Note**: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☐ *Total of _____ forms are submitted.

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 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: 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.

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

> Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

1. **For patents issued before March 2, 2010:** A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.

2. **For patents issued on or after March 2, 2010 (do not use this form):** Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

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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ALEXANDRIA, VA 22314-1176

Mail Date: 09/03/2010

Applicant	: David Walterus Cornelius Dekkers	: DECISION ON REQUEST FOR
Patent Number	: 7663000	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/565,506	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/02/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **715** 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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MAILED
DEC 15 2010
PCT LEGAL ADMINISTRATION

In re Application of	:	DECISION ON
DICK et al	:	
Application No. 10/565,511	:	
PCT No.: PCT/US2004/007733	:	
Int. Filing Date: 13 July 2004	:	
Priority Date: 23 July 2003	:	PETITION UNDER
Attorney's Docket No.: 3081.151US01	:	
For: METHOD, DEVICE AND ...	:	
TREATMENT SYSTEM	:	37 CFR 1.182 and 1.181

This decision is in response to applicants' "PETITION UNDER 37 CFR 1.182 AND PETITION FOR WITHDRAWAL OF THE NOTICE OF ABANDONMENT," filed on 12 October 2010 to correct the PCT serial number from the transmittal letter entry of PCT/US2004/007733 to PCT/EP2004/007733 and to vacate the holding of abandonment.

BACKGROUND

On 13 July 2004, this international application was filed, which claimed priority to an application filed on 23 July 2003.

On 23 January 2006, applicants filed a Transmittal letter that contained the wrong international application no. PCT/US2004/007733 for entry into the national stage in the United States Patent and Trademark Office (USPTO), which was accompanied by, the basic national fee. No executed declaration or oath was filed at such time.

On 20 December 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by the International application number and International filing date and a copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e). The Notice stated that the above items must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond, and that failure to properly respond would result in abandonment.

On 14 January 2008, applicants filed an executed declaration with a transmittal letter that contained the wrong international application no.: PCT/US2004/007733.

On 15 February 2008, the United States Designated/Elected Office mailed a Notification of Defective Response (Form PCT/DO/EO/916)... The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 12/20/2007 have not been completed a copy of the "Sequence Listing"....

On 20 March 2008, applicants filed a letter indicating that a sequence letter is not relevant of the subject matter of this application.

On 30 July 2010, the United States Patent and Trademark Office mailed a Notification of Abandonment (PCT/DO/EO/909) because applicant had failed to respond to the notice mailed 02/15/2008.

On 17 February 2010, petitioner submitted the instant petition under 37 CFR 1.182 and 1.181.

DISCUSSION

37 CFR 1.181:

A review of the application shows that applicants incorrectly entered the international application number PCT/US2004/007733 rather than the correct number PCT/EP2004/007733 both at the initial filing on 23 January 2006 and at the time of response to the Notice of Missing Requirements on 20 December 2007. The national stage application based on international application number PCT/US2004/007733 required both an executed declaration and a sequence listing. As a result, the Notice of Missing Requirements mailed correctly indicated what was missing on the national stage filing based on applicants incorrect submission. Applicants' response of only the declaration was incomplete as it was not a proper response because applicants neither provided a petition to correct their error nor a sequence listing.

The USPTO then mailed a Notice of Defective Response indicating that applicants had not completely responded to the Notice of Missing Requirements. Applicants responded by indicating that no sequence listing was required but applicants never corrected their international application number from PCT/US2004/007733 to PCT/EP2004/007733. Consequently, a sequence listing was still outstanding based on the incorrect international application number submitted by applicants. Therefore, the application went abandoned.

Applicants did not file a petition the correct the international application number from PCT/US2004/007733 to PCT/EP2004/007733 until after applicants received a Notice of Abandonment.

Consequently, the aforementioned application was correctly abandoned for failure by applicants to properly respond to the notices mailed by the USPTO by correcting the international application number timely.

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

37 CFR 1.182:

Accordingly, after aforementioned application is revived, the petition under 37 CFR 1.182 will be reviewed.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.182 is held in **ABEYANCE** until the aforementioned application is revived.

RECOMMENDATION

Petitioner may request revival of the application via petition under 37 CFR 1.137(b) as petitioner has provided the required reply the correction of the international application number to PCT/EP2004/007733.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. 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 (c) of this section. Note MPEP 711.03(c)

This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 to rescind the Notice of Abandonment is **DISMISSED** without prejudice.

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

The application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.181." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (571) 272-3276
Facsimile : (571) 273-0459

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MAILED
MAR 16 2011
PCT LEGAL ADMINISTRATION

In re Application of	:	DECISION ON
DICK et al	:	
Application No. 10/565,511	:	
PCT No.: PCT/US2004/007733	:	
Int. Filing Date: 13 July 2004	:	
Priority Date: 23 July 2003	:	PETITION UNDER
Attorney's Docket No.: 3081.151US01	:	
For: METHOD, DEVICE AND ...	:	
TREATMENT SYSTEM	:	37 CFR 1.182 and 1.137(b)

This decision is in response to applicants' "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)" filed on 10 January 2011 correcting the international application number from PCT/US2004/007733 to PCT/EP2004/007733.

BACKGROUND

In a decision from this Office on 15 December 2010, the decision indicated that the petition to correct the international application number was filed after the applicants received a Notice of Abandonment. As a result, the application remained abandonment.

On 15 December 2010, petitioner filed a petition to revive the present application under 37 CFR 1.137(b).

DISCUSSION

37 CFR 1.182

Petitioner states that the PCT number was incorrectly entered as PCT/US2004/007733 in the transmittal letter rather than the correct number PCT/EP2006/007733 in the petition filed on 12 October 2010.

A review of the record of the international application shows that although petitioner indicates that the correct priority application number is as follows: PCT/EP2006/007733 (petition dated 10-12-2010), the correct number appears to be PCT/EP2004/007333. Petitioner needs to explain the inconsistency.

Therefore, the petition to accept the PCT number of PCT/EP2006/007733 for the instant application is dismissed.

Once the petition is granted the correct number will be reflected in the filing receipt.

DECISION

The petition under 37 CFR 1.182 is **DISMISSED**, without prejudice.

37 CFR 1.137(b)

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. 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 (c) of this section.

Petitioner has satisfied requirements (2), (3), and (4) under 37 CFR 1.137(b) but not requirement (1).

Petitioner has provided: (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

However, petitioner has not provided the proper reply because the correct PCT application number has not been provided.

Accordingly, the petition is not deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.182 and 1.137(b)," and the petition must be paid.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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JUL 15 2011
PCT LEGAL ADMINISTRATION

In re Application of	:	DECISION ON
DICK et al	:	
Application No. 10/565,511	:	
PCT No.: PCT/EP2004/007733	:	
Int. Filing Date: 13 July 2004	:	
Priority Date: 23 July 2003	:	PETITION UNDER
Attorney's Docket No.: 3081.151US01	:	
For: METHOD, DEVICE AND ...	:	
TREATMENT SYSTEM	:	37 CFR 1.182 and 1.137(b)

This decision is in response to applicants' "RENEWED PETITION UNDER 37 CFR 1.182 and 37 CFR 1.137(b)" filed on 13 May 2011 correcting the international application number from PCT/US2004/007733 to PCT/EP2004/007733.

BACKGROUND

In a decision from this Office on 16 March 2011, the decision indicated that the petition needed to explain the inconsistency of the application number. As a result, the application remained abandonment.

On 13 May 2011, petitioner filed a renewed petition to correct the PCT application number and to revive the present application under 37 CFR 1.137(b).

DISCUSSION

37 CFR 1.182

Petitioner states that the PCT number was incorrectly entered due to a typographical error and that correct number is PCT/EP2004/007733. The correct number was filed with the specification and a copy of the correct international publication was filed on 23 January 2006. Accordingly, there is sufficient evidence that the correct international application PCT number is PCT/EP2004/007733.

Therefore, the petition to accept the correct PCT number of **PCT/EP2004/007733** for the instant application is granted, and will be reflected in the filing receipt.

DECISION

The petition under 37 CFR 1.182 is **GRANTED**, without prejudice.

37 CFR 1.137(b)

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. 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 (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the proper PCT application number, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (571) 272-6376
Facsimile: (571) 273-0459

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SMIRMAN IP LAW, PLLC
P.O. BOX 80364
ROCHESTER MI 48308

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Baranov et al.	:	
Application No.: 10/565527	:	ON PETITION
Filing or 371(c) Date: 01/23/2006	:	
Attorney Docket Number:	:	
YOU.00001	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed December 16, 2010.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed March 11, 2009. The Office action set a three (3) period for reply. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on June 12, 2009. A Notice of Abandonment was mailed October 2, 2009.

Applicant files the present petition and Amendment in response to the Office action. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment is filed with the present petition; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 3715 for processing of the response to the Office action filed with the petition in the normal course of business.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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JAN 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Baranov et al.	:	
Application No. 10/565,529	:	DECISION ON PETITION
Filed: January 23, 2006	:	
Attorney Docket No. YOU.00002	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 16, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed, November 18, 2008, which set a shortened statutory period for reply of three (3) months. A one-month extension of time under the provisions of 37 CFR 1.136(a) was timely obtained. Accordingly, the application became abandoned on March 19, 2009. A Notice of Abandonment was mailed July 17, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405.00 and the submission required by 37 CFR 1.114 (previously submitted March 18, 2009); (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

Further, 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center AU 3661 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed March 18, 2009.

Joan Olszewski
Petitions Examiner
Office of Petitions

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Joseph J. Crimaldi
Roetzel & Andress
222 S. Main St.
Akron OH 44308

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of	:	
Daniel J. Smith	:	
Application No. 10/565,573	:	DECISION ON PETITION
Filed: February 26, 2007	:	
Attorney Docket No. **089498.0480.US**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 23, 2010, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 21, 2010, 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 22, 2010

The petition is hereby **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1734 for appropriate action by the Examiner in the normal course of business.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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CONTINENTAL TEVES, INC.
ONE CONTINENTAL DRIVE
AUBURN HILLS MI 48326-1581

MAILED
JAN 3 1 2011
OFFICE OF PETITIONS

In re Application of	:	
MARTIN	:	
Application No. 10/565,581	:	DECISION ON PETITION
Filed: January 23,2006	:	
Attorney Docket No. TM003	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 29, 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, July 9, 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 October 10, 2008. A Notice of Abandonment was mailed March 3, 2009.

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

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted.

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

This application is being referred to Technology Center AU 2855 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwy
Petitions Examiner
Office of Petitions

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TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVELAND OH 44114

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of
Martin Kurth et al.
Application No. 10/565,607
Filed: October 27, 2006
Attorney Docket No. **16-938- P/US**

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 07, 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, March 17, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 18, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the response to the non-final office action of March 17, 2009 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 3781 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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CLEVELAND OH 44114

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JAN 30 2012
OFFICE OF PETITIONS

In re Application of

Kurth, et al. :

Application No. 10/565,607 : DECISION ON PETITION

Filed: October 27, 2006 :

Attorney Docket No. **16-938- P/US**

This is a decision on the petition under 37 CFR 1.137(b), filed January 12, 2012, 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 December 22, 2010, 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 March 23, 2011. A Notice of Abandonment was mailed July 26, 2011.

The amendment filed January 12, 2012, is noted.

The application is being forwarded to Technology Center 3700, GAU 3781 for further processing.

Telephone inquiries concerning this decision 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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MCDONNELL BOEHNEN HULBERT @ BERGHOFF LLP
300 SOUTH WACKER DRIVE
SUITE 3100
CHICAGO IL 60606

In re Application of	:	
Anand, et al.	:	
Application No. 10/565,657	:	ON APPLICATION FOR
Filed: October 5, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. **05-932-A5**	:	
	:	

This is in response to the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)", filed November 24, 2010. Applicants submits that the patent term adjustment to be indicated on the patent is four hundred and sixty-seven (467) days, not four hundred and eighteen (418) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for reconsideration of patent term adjustment is DISMISSED.

On August 27, 2010, a "Determination of Patent Term Adjustment under 35 U.S.C. 154(b)" was mailed indicating that the initial patent term adjustment is 418 days. The instant petition under 37 CFR 1.705(b) was filed on November 24, 2010—on the same day that issue fee was paid. Petitioner asserts that the initial patent term adjustment is 467. Specifically, petitioner states that:

In the PTA calculation shown on PAIR as of November 19, 2010, a 49-day delay was attributed to Applicants for filing a corrected response to the Office's June 16, 2009, requirement for restriction. Applicants' original response was filed on July 14, 2009, and a corrected response was filed 49 days later on September 1, 2009...under 35 USC 154(b)(2)(C)(ii), Applicants could have replied at any time until September 16, 2009, without having been deemed to "have failed to engage in reasonable efforts to conclude prosecution of examination." Therefore, even though a correction to Applicant's original response was filed on September 1, 2009, it was prior to the September 16,

2009, deadline established by § 154(b)(2)(C)(ii) based on the June 16, 2009 mailing date for restriction. Accordingly, Applicants submit that the 49-day delay attributed by the Office is inappropriate as Applicants did not fail to engage in reasonable efforts to conclude processing or examination.

Excerpt taken from "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)", filed November 24, 2010, *pgs. 1-2.*

Applicants' argument has been considered and is not persuasive. A review of the file history reveals that a restriction/election requirement was mailed June 16, 2009, to which applicants filed a response on July 14, 2009. A Notice of Non-Compliant Amendment was mailed on August 18, 2009. Applicants filed on September 1, 2009, a response correcting the omission of the July 14, 2009, response. These circumstances are governed by 37 CFR 1.704(c)(7)[1]. Applicants filed a response under 37 CFR 1.704(b) on July 14, 2009. Any further responses filed after the July 14, 2009, response and before the mailing of an Office action under 37 CFR 1.702(a)(2) would subject the application to a reduction of the patent term adjustment under 37 CFR 1.704(c)(7) or (c)(8). In this case, the response under 37 CFR 1.704(b) was deemed to have an omission. The supplemental response filed on September 1, 2009, correcting the omission subjected the application to a reduction of the patent term adjustment under 37 CFR 1.704(c)(7). While applicants' assert that applicants' did not fail to engage in reasonable efforts to conclude prosecution of examination because the response and the supplemental response were filed within the three month period set forth in 37 CFR 1.704(b), 37 CFR 1.704(c)(7) makes clear that filing a response that contains an omission, or is otherwise incomplete, is a circumstance that constitutes a failure of applicants to engage in reasonable efforts to

---

[1] 37 CFR 1.704(c)(7) provides that:

> (c) 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:
>
> (7) Submission of a reply having an omission (§1.35(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed an ending on the date the reply or other paper correcting the omission was filed.

conclude processing or examination of the application, notwithstanding whether the supplemental reply correcting the omission was filed within the three months of the Office Action.

In view thereof, the petition is DISMISSED.

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

The application file is being forwarded to the 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[2]).

The application file is being forwarded to the Office of Data Management for issuance of the patent.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

[2] See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR ' 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,702	09/13/2006	Richard Martin	05-1128-A1	2568

63572 7590 01/18/2011
MCDONNELL BOEHNEN HULBERT @ BERGHOFF LLP
300 SOUTH WACKER DRIVE
SUITE 3100
CHICAGO, IL 60606

EXAMINER
COLEMAN, BRENDA LIBBY

ART UNIT	PAPER NUMBER
1624	

MAIL DATE	DELIVERY MODE
01/18/2011	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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JAN 1 8 2011

MCDONNELL BOEHNEN HULBERT @ BERGHOFF LLP
300 SOUTH WACKER DRIVE
SUITE 3100
CHICAGO IL 60606

In re Application of	:	
Martin et al.		
Serial No.: 10/565,702	:	Decision on Petition
Filed: January 23, 2006		
Attorney Docket No.: **05-1128-A1**	:	

This letter is in response to the petition filed under 37 C.F.R. § 1.181 filed on December 10, 2010, to withdraw the final rejection of September 30, 2010.

BACKGROUND

A 5-way restriction requirement and a tentative election of a single species was mailed to applicants on August 7, 2009.

Applicants made an election to the restriction requirement and an election to a single species on February 5, 2010.

The examiner mailed to applicants a non-final Office action on April 14, 2010. Claims 1-5 and 32-48 were rejected under 35 USC 112, first paragraph, as being non-enabling. Claims 1-5 and 32-48 were rejected under 35 USC 112, second paragraph, as indefinite. Claims 6-31 were withdrawn from consideration.

On July 14, 2010, applicants submitted an amendment with remarks and amendments to the claims.

The examiner mailed to applicants a final Office action on September 30, 2010. Claim 1-5, 32, 33, 34-42, 44, 46 and 48 were rejected under 35 USC 112, second paragraph, as being indefinite. Claims 34-42, 44 and 48 were rejected under 35 USC 112, first paragraph, as being non-enabling. Claims 43 and 45 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form.

On November 24, 2010, applicants submitted an after final amendment including claim amendments.

On December 2, 2010, the examiner mailed to applicants an advisory action indicating that the after final amendment would not be entered because new issues would be raised requiring further consideration and/or search.

On December 10, 2010, applicants submitted the petition currently under review.

DISCUSSION

The petition and file history have been carefully considered.

In the petition, applicants "respectfully submit that the search and examination procedure employed was inconsistent with Patent Office guidelines and deprived the applicants of their right to a full search of the claims. Therefore, the final rejection should be withdrawn and the claims searched to their full extent permitted by the prior art, up to the full scope of the claims."

Specifically, applicants argue "In the present application, examination has been conducted only on the elected species, as stated by the Office in the December 2010 Advisory Action; all claims drawn to unelected species (claims 6-31) were withdrawn by the Office even though no prior art rejections were made. The applicants respectfully submit this is in violation of the PTO requirement of compact examination (e.g., MPEP § 707.07(g) and MPEP § 2106(11) ("Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the initial review of the application, even if one or more claims are found to be deficient with respect to some statutory requirement.")), and MPEP § 803.02."

Applicants also argue the proper procedure for examining Markush claims is set forth in MPEP 803.02, a search of a Markush claim (which may include independent and distinct inventions) is to begin with the elected species and, if the species is allowable over the prior art, expanded to the full scope of the claims allowable over the prior art. The search may be stopped short of the full scope only if prior art is found that renders the claims unpatentable as anticipated or obvious; rejections under 35 USC § 112 are not a proper basis for limiting the search to the elected species. This is consistent with the policy of compact prosecution, which requires simultaneous examination of the claims as to all bases of patentability.

Applicants also point out "Because an improper search and examination procedure was employed and the applicants were denied the search to which they were entitled, the applicants respectfully submit that the Office should withdraw the final rejection and search the claims (including claims 6-31) to the full extent permitted by the prior art, up to the full scope of the claims. Should prior art be identified, a non-final action would be appropriate to permit the applicants an opportunity to amend the claims and/or argue in favor of patentability. If the prior art rejection is thereby overcome, the search should be expanded once again, as is consistent with the example provided in MPEP § 803.02."

Applicants' arguments have been accorded careful consideration and are persuasive. Accordingly, prosecution will be reopened.

DECISION

The petition is **GRANTED**.

The Office action mailed September 30, 2010 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action. The after final amendment of November 24, 2010 will also be entered. This application will be forwarded to the examiner to take an action consistent with the decision herein.

The application will be forwarded to the examiner for preparation of a action(s) wherein proper search and examination procedures are followed.

Should there be any questions about this decision, please contact Special Program Examiner Marianne Seidel, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Remy Yucel
Acting Director, Technology Center 1600

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,702	09/13/2006	Richard Martin	05-1128-A1	2568

63572 7590 08/31/2011
MCDONNELL BOEHNEN HULBERT @ BERGHOFF LLP
300 SOUTH WACKER DRIVE
SUITE 3100
CHICAGO, IL 60606

EXAMINER
COLEMAN, BRENDA LIBBY

ART UNIT	PAPER NUMBER
1624	

MAIL DATE	DELIVERY MODE
08/31/2011	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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AUG 3 1 2011

MCDONNELL BOEHNEN HULBERT
@ BERGHOFF LLP
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CHICAGO IL 60606

In re Application of:	:
Martin et al.	:
Serial No.: 10/565,702	: PETITION DECISION
Filed: September 13, 2006	:
Attorney Docket No.: **05-1128-A1**	:

This is in response to the petition under 37 CFR § 1.181, filed July 19, 2011, requesting that the finality of the Office action of May 19, 2011 be withdrawn.

BACKGROUND

Only the Office action(s) pertinent to the petition will be discussed herein.

The examiner mailed a final Office action on September 30, 2010 setting a three month statutory limit for reply. At the time of this final Office action, claims 1-46 and 48 were pending. The examiner rejected claims 1-5, 32-42, 44, 46, and 48 and objected to claims 43 and 45. Claims 1-5, 32, 33, 34-42, 44, 46 and 48 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 34-42, 44 and 48 were rejected under 35 U.S.C. § 112, first paragraph, as being non-enabling.

In response thereto, applicants submitted an amendment after final and remarks on November 24, 2010 addressing the rejections set forth in the Office action of September 30, 2010.

On December 2, 2010, the examiner mailed to applicants an advisory action indicating that the after final amendment would not be entered because the amendments raised new issues that would require further consideration and/or search.

In response thereto, applicants filed a petition on December 10, 2010, requesting that the finality of the Office action of September 30, 2010 be withdrawn.

A petition decision was rendered on January 18, 2011 granting the decision to withdraw finality.

The examiner mailed a final Office action on May 19, 2011, setting a three month statutory limit for reply. At the time of this final Office action, claims 1-46 and 48 were pending. The examiner rejected claims 1-8, 10-17, 19-22, 24-28, 30-42, 44, 46, and 48 and objected to claims 9, 18, 23, 29, 43 and 45. Claims 1-8, 10-17, 19-22, 24-28, 30-42, 44, 46 and 48 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-6, 14-17, 19-22, 24-28, 30, 32, 33, 46 and 48 were rejected under 35 U.S.C. § 112, first paragraph, as being non-enabling. Claim 1 was rejected under 35 US 102(b) as anticipated by Janssen et al.

In response thereto, applicants filed a petition on July 19, 2011, requesting that the finality of the Office action of May 19, 2011 be withdrawn.

On July 19, 2011, an amendment after final and remarks were also filed addressing the rejections set forth in the final Office action of May 19, 2011.

On July 26, 2011, the examiner mailed to applicants an advisory action indicating that the after final amendment would not be entered because the amendments raised new issues that would require further consideration and/or search.

On July 29, 2011, a second amendment after final and remarks were filed addressing the rejections set forth in the final Office action of May 19, 2011.

On August 9, 2011, the examiner mailed to applicants a second advisory action indicating that the after final amendment would not be entered because the amendments raised new issues that would require further consideration and/or search.

DISCUSSION

The petition of July 19, 2011and the file history have been carefully considered.

In the petition filed by applicants on July 19, 2011, applicants submit "that, according to MPEP § 706.07(a), a second or a subsequent action on the merits cannot be made final if it includes a new ground of rejection (for example, a rejection based on newly cited art) that is necessitated neither by Applicant's amendment of the claims nor by information submitted in an IDS. In the currently pending final Office Action the Office issued two rejections on new grounds, neither of which were necessitated by the Applicant's claim amendments. In particular, the Office issued a new rejection under 35 USC § 102 citing new prior art (Janssen *et al.)*. In fact, this is the first prior art rejection that has been issued in this application. This art was not cited in an IDS, nor was it necessitated by the previous amendments. And, furthermore, it in fact does not anticipate

the claims as explained in the concurrently-filed response. The Office also issued a rejection under 35 USC § 112, first paragraph, raising issues that were not previously raised. Previously, the Office rejected claims 1-5 and 32-48 for lack of enablement for the terms "solvates", "polymorphs", and "prodrug", and claims 32-42, 44, and 48, for lack of enablement for the terms "esters", "enol ethers", etc. In response to these rejections, Applicants amended the claims to remove these terms resulting in the claims with reduced scope. In this Action, the Office issued a new enablement rejection based on the definitions of X, Y, Z, $R^{1'}$ etc. This enablement rejection was not previously raised and not necessitated by the claim amendments as the same definitions of X, Y, Z, $R^{1'}$ etc., as presently pending were previously pending. In view of both newly cited § 102 art and new grounds of rejections under 35 USC § 112, Applicants respectfully request that the finality of the pending Action be withdrawn. Applicants simultaneously submit herewith a petition to the technology center Director for withdrawal of the finality of this action."

Applicants' points are well-taken and found persuasive. Accordingly, it is *not* proper for an office action to be made final when the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims as in the instant case nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c).

DECISION

The petition is **GRANTED**.

The final Office action mailed May 19, 2011 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action. The after final amendments of July 19, 2011 and July 29, 2011 will also be entered. This application will be forwarded to the examiner to take an action consistent with the decision herein.

DECISION

The petition is **GRANTED.**

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Remy Yucel
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

MAILED
NOV 04 2010
OFFICE OF PETITIONS

In re Application of :
Kajihara et al. :
Application No. 10/565,799 :
Filed: January 25, 2006 :
Attorney Dkt No. 9778-3 :
For: AMINATED COMPLEX-TYPE :
SUGAR CHAIN DERIVATIVES AND :
PROCESS FOR THE PRODUCTION :
THEREOF

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed August 4, 2010. Applicants dispute the 342 adjustment and contend the adjustment should be 345 days.

The application for patent term adjustment is **Granted** to the extent indicated.

On May 20, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 294 days. The instant application for patent term adjustment was timely filed on August 20, 2010.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred ninety-seven **(297)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Applicants dispute the 342 day adjustment. Applicants contend an adjustment of 345 days is warranted based upon a fulfillment date of January 25, 2006. Applicants maintain that the requirements of 35 USC §371 (c) were met on January 25, 2006 and requested expedited examination pursuant to 35 USC 371 (f). Applicants contend a 345 day adjustment is required for failure

by the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements under 35 U.S.C. 371, pursuant to 37 CFR §1.702(a)(1).

The Office has considered applicants' argument and finds it persuasive that an adjustment is required. A restriction requirement was mailed on March 4, 2008, which is 14 months and 342 days after the application fulfilled the requirements of 35 U.S.C. 371 on January 28, 2006. Petitioner contends fulfillment of the application was met on January 25, 2006, as early commencement was requested. A review of the record shows that although the transmittal letter submitted on January 25, 2006 is not in the record, petitioner has provided a copy of the transmittal which shows early commencement was requested and a copy of a postcard receipt dated January 25, 2006.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 297 days.

Applicants delay at the time of the mailing of the Notice of Allowance totals 48 (16 + 32) days. Office delays total 345 days.

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

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

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 10565799 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10565799

Application Filing Date	01/25/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	342
A Delays	342	PTO Manual Adjustment	3
B Delays	0	Applicant Delay (APPL)	48
C Delays	0	Total PTA (days)	297

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent* Action Number
72	11/03/2010		P028	Adjustment of PTA Calculation by PTO	3		0
63	05/20/2010		MN/=	Mail Notice of Allowance			0
62	05/19/2010		IREV	Issue Revision Completed			0
61	05/19/2010		DVER	Document Verification			0
60	05/19/2010		N/=	Notice of Allowance Data Verification Completed			0
59	05/19/2010		DOCK	Case Docketed to Examiner in GAU			0
58	05/17/2010		EX.A	Examiner's Amendment Communication			0
57	05/17/2010		CNTA	Notice of Allowability			0
56	05/15/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
55	04/19/2010		FWDX	Date Forwarded to Examiner			0
54	04/19/2010		A.NE	Amendment after Final Rejection			0
53	03/12/2010		PA..	Change in Power of Attorney (May Include Associate POA)			0
52	03/11/2010		C.AD	Correspondence Address Change			0
51	03/09/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
50	03/08/2010		CTFR	Final Rejection			0
49	01/04/2010		FWDX	Date Forwarded to Examiner			0
48	11/23/2009	10/22/2009	A...	Response after Non-Final Action		32	45
47	11/23/2009		XT/G	Request for Extension of Time - Granted			0
45	07/22/2009		MCTNF	Mail Non-Final Rejection			0
44	07/20/2009		CTNF	Non-Final Rejection			0
43	05/09/2009		FWDX	Date Forwarded to Examiner			0
41	05/09/2009		FWDX	Date Forwarded to Examiner			0
39	05/09/2009		ABN9	Disposal for a RCE / CPA / R129			0
42	04/29/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
40	04/29/2009		RCEX	Request for Continued Examination (RCE)			0
38	04/29/2009		BRCE	Workflow - Request for RCE - Begin			0
37	01/30/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
36	01/29/2009		CTFR	Final Rejection			0
35	01/26/2009		C.ADB	Correspondence Address Change			0
34	01/26/2009		C.ADB	Correspondence Address Change			0
33	11/20/2008		FWDX	Date Forwarded to Examiner			0
32	10/23/2008	10/07/2008	A...	Response after Non-Final Action		16	30
31	10/23/2008		XT/G	Request for Extension of Time - Granted			0
30	07/07/2008		MCTNF	Mail Non-Final Rejection			0
29	07/03/2008		CTNF	Non-Final Rejection			0
21	06/24/2008		DOCK	Case Docketed to Examiner in GAU			0
20	04/25/2008		FWDX	Date Forwarded to Examiner			0
19	04/04/2008		ELC.	Response to Election / Restriction Filed			0
18	03/04/2008	03/28/2007	MCTRS	Mail Restriction Requirement	342		10
17	02/26/2008		CTRS	Requirement for Restriction / Election			0
16	10/11/2007		DOCK	Case Docketed to Examiner in GAU			0
15	03/15/2007		PG-ISSUE	PG-Pub Issue Notification			0
14	01/15/2007		ISSCOMP	IFW ISS Processing by Tech Center Complete			0
9	12/11/2006		WROIPE	Application Return from OIPE			0
8	12/11/2006		ROIPE	Application Return TO OIPE			0
6	12/11/2006		WROIPE	Application Return from OIPE			0
5	12/11/2006		ROIPE	Application Return TO OIPE			0
3	12/08/2006		OIPE	Application Dispatched from OIPE			0
24	07/06/2006		IDSC	Information Disclosure Statement considered			0
13.7	07/06/2006		M844	Information Disclosure Statement (IDS) Filed			0
13	07/06/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
2	02/16/2006		L194	Cleared by OIPE CSR			0
10	01/28/2006		371COMP	371 Completion Date			0

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PO BOX 37428
RALEIGH NC 27627

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Patent No. 7,851,618
Issued: December 14, 2010
Application No. 10/565,799
Filed: January 25, 2006
Attorney Docket Number: 9778-3

ON PETITION

This is a decision on the petition filed February 18, 2011 under 37 CFR 3.81(b)[1] to correct the assignee data on the Issue Fee Transmittal.

The petition is **GRANTED**.

Although the name of the second assignee was not included on the Issue Fee Transmittal, PTOL-85B, petitioner states that the assignees are **Otsuka Chemical Co., Ltd., Osaka (JP); and Yasuhiro Kajihara, Kanagawa (JP)**.

In view thereof, and since Office assignment records reflect that **Yasuhiro Kajihara, Kanagawa (JP)** is also an assignee of record, the request complies with the provisions of 37 CFR 3.81(b) and it is therefore appropriate for a certificate of correction to issue.

The petition fee in the amount of $130.00 and the fee for the certificate of correction in the amount of $100 have been applied.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This file is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1] *See* Official Gazette of June 22, 2004.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/28/10 **Paper No.:** ——

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/565845 Patent No.: 7751369B2

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

FOR IFW FILES: "Title"

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: The request for certificate of correction is approved as it is directed to informal matters that does not affect or alter the scope of the claims.

NICK CORSARO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,853	01/26/2006	Yukitaka Shimizu	19070230PUS1	8106

2292 7590 09/09/2010
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
MUHAMMAD, KHALIF R

ART UNIT	PAPER NUMBER
3685	

NOTIFICATION DATE	DELIVERY MODE
09/09/2010	ELECTRONIC

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

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

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

mailroom@bskb.com

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SEP - 8 2010

Michael R. Cammarata
Birch, Stewart, Kolasch & Birch, LLP
810 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747

In re Application of: Yukitaka Shimizu et al.	:	DECISION ON PETITION
Application No. 10/565,853	:	TO WITHDRAW FINALITY
Filed: January 26, 2006	:	OF OFFICE ACTION
For: ACCOUNTING SYSTEM CONTENT REPRODUCTION DEVICE,LICENSE SALES DEVICE, PROGRAM AND RECORDING MEDIUM	:	UNDER 37 C.F.R. 1.181

This is in response to applicants' petition under 37 CFR 1.181 filed on September 30, 2009 to have the restriction requirement dated July 28, 2008 withdrawn, and the finality of the August 6, 2009 Office action withdrawn.

This communication is also in response to applicants' petition filed on June 3, 2010 to i) have the finality of the March 04, 2010 Office Action withdrawn ii) transfer the Application to another Examiner and iii) ensure that Office Actions comply with 37 C.F.R. 1.104(c)(2), MPEP 707.07(f) and MPEP 707.07(d)

The petitions are **GRANTED-IN-PART.**

Applicants allege that the July 28, 2008 restriction requirement was improper in that the application was a national stage entry of an international application and therefore should be treated according to MPEP 1850 ("Unity of Invention").

37 CFR 1.499. Unity of invention during the national stage

> *If the examiner finds that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted. Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner. Review of any such requirement is provided under § § 1.143 and 1.144.*

The record shows that on July 28, 2008, a restriction requirement was issued on new claims 14-32. In a response filed on August 28, 2008, petitioner elected Group I for examination. As part

of the remarks, however, petitioner also pointed out that the application was a national stage entry of an international application and therefore should be treated according to MPEP 1850 ("Unity of Invention"). As the instant application is a national stage entry of the international application PCT/JP04/09913, the claims should be restricted in accordance to rule 37 CFR 1. 475. Therefore, the restriction requirement dated July 28, 2008 is improper.

Subsequently, several Office actions (a non-final action dated December 24, 2008 and final actions dated August 6, 2009 and February 3, 2010) which either did not address applicants' arguments with respect to the appropriateness of the original restriction or contained typographical errors (e.g. the examiner mistakenly cut-and-paste the wrong Office action into the February 3, 2010 action) were issued. A supplemental office action was issued on March 4, 2010 that included a proper restriction requirement per applicants' request and in line with MPEP 1850. The supplemental action was made final. The March 4, 2010 supplemental final was the examiner's good faith effort to resolve all outstanding matters and provide a complete Office action.

Nonetheless, as the July 28, 2008 restriction requirement was improper, the finality of the initial and each subsequent final Office action, including the March 4, 2010 Supplemental, is withdrawn. Applicants' request to have the finality of the March 4, 2010 Office action withdrawn is GRANTED.

In regard to applicants' request to have the application transferred to a new examiner, while petitioner's frustration is understandable, a review of the file history does not display any issues that would prevent the petitioner from receiving a fair examination of the invention. Nor is there any evidence of any arbitrary or capricious actions on the part of the examiner assigned to examine the application. Therefore, applicants' request to transfer the application new examiner is DENIED.

A third and final request by the applicants is for the application to be examined in accordance with MPEP 707.02, 37 CFR 1.104(c)(2) and MPEP 707.07(d) and (f).

In the March 4, 2010 Office action, the examiner applied a Unity of Invention restriction requirement (page 2, section 2), withdrew the finality of previous actions (page 3, section 8), identified what the examiner considered indefinite (pages 4-7, sections 10-19) and articulated why the claims are obvious in view of the prior art to one of ordinary skill in the art (pages 7-13, sections 20-30) including responding to applicants' arguments and articulating what the examiner considers as intended uses (page 3, section 9; pages 8-9, page 12, lines 3-9). Therefore, applicants have received an Office action in accordance with MPEP 707.02, 37 CFR 1.104(c)(2) and MPEP 707.07(d) and (f).

MPEP 1201 states that:

> *Where the differences of opinion concern the denial of patent claims because of prior art or other patentability issues, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute (35 U.S.C. 134)."*

With respect to the 112 second paragraph rejection and what the examiner considers as "intended use", these and other matters related to the merits are not-petitionable subject matter. The issues raised by applicant are questions relate to the merits which go to the patentability of the claims. As such, these questions are matters appealable to the Board of Patent Appeals and Inferences, and not petitionable matters.

Accordingly the request for examination in accordance with MPEP 707.02, 37 CFR 1.104(c)(2) and MPEP 707.07(d) and (f) is dismissed.

As a matter of rights, applicants' response filed on June 3, 2010 will be entered and forwarded to the examiner for consideration.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Calvin L. Hewitt II at (571) 272-6709.

Wynn W. Coggins, Director
Technology Center 3600
(571) 272-5150

clh/lm: 9/2/10

LM

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DAVID SMALL
LOCATA CORPORATION
401 CLUNIES ROSS STREET
ACTON 2601 AU AUSTRALIA

MAILED
APR 01 2011
OFFICE OF PETITIONS

In re Application of	:	
Small, David	:	
Application No. 10/565,875	:	ON PETITION
Filed: January 24, 2006	:	
Attorney Docket No. 0007 US SpaceLoc	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 8, 2011, 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 Issue Fee Transmittal with payment of the issue and publication fees, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

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.

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

Liana Walsh
Petitions Examiner
Office of Petitions

cc: PAULA N. CHAVEZ
LOCATA CORPORATION PTY LTD
111 CANBERRA AVENUE
GRIFFITH ACT 2603
AUSTRALIA

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/27/10

TO SPE OF : ART UNIT 1624 James Wilson Spe

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/566193 Patent No.: 7605161

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571 _____

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Lewis J Kreisler
Legal Department
930 Clopper Road
Gaithersburg MD 20878

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Shalini Sharma :
Application No. 10566,302 : DECISION ON PETITION
Filed: March 1, 2007 :
Attorney Docket No. 18037-PCTUS :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 9, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due, which was mailed January 8, 2010. The Notice of Allowance and Fee (s) Due and the Notice of Allowability 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 9, 2010. A Notice of Abandonment was mailed on April 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the $1510 issue and publication fees of $300, (2) the petition fee of $1620; 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 the Office of Data Management for further processing.

Charlema Grant
Petitions Attorney
Office of Petitions

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LUCE, FORWARD, HAMILTON & SCRIPPS LLP
2050 MAIN STREET, SUITE 600
IRVINE CA 92614

MAILED

MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
CHELLAPPA, Anand et al.	:	
Application No. 10/566,334	:	DECISION ON PETITION
Filed: February 09, 2007	:	TO WITHDRAW
Attorney Docket No. **37929-32401**	:	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 15, 2011.

The request is **NOT APPROVED**.

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 C.F.R 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record cannot be approved because the change of address is not that of: (1) the first named inventor; or (2) an assignee of the entire interest under C.F.R 3.71, who has properly intervened.

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

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/3/09 **Paper No.:** ——

TO SPE OF : ART UNIT 2862

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/566370 Patent No.: 7602558B2

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: _____

Clayton E. Laffalle 3/29/11

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.
10/566,481	01/31/2006	Moshe Einat	31267	5758

7590 03/03/2011
MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON, VA 22215

EXAMINER
SOLOMON, LISA

ART UNIT	PAPER NUMBER
2861	

MAIL DATE	DELIVERY MODE
03/03/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

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

FORM PTOM327-5 (Rev. 02/08)

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

March 3, 2011

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

In re Application of	:	
Moshe Einat et al.	:	**DECISION ON PETITION**
Application No. 10566481	:	
Filed: 1/31/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 31267	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) January 31, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

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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NELSON MULLINS RILEY &
SCARBOROUGH LLP
FLOOR 30, SUITE 3000
ONE POST OFFICE SQUARE
BOSTON MA 02109

MAILED
JAN 11 2011
OFFICE OF PETITIONS

In re Patent of Nishimura et al.:		
Patent No. 7,790,957	:	
Issue Date: September 7, 2010	:	DECISION ON
Application No. 10/566,593	:	REQUEST FOR RECONSIDERATION
Filed: August 17, 2006	:	OF
Atty Docket No. SHO-028US	:	PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 CFR § 1.705(b)," filed October 27, 2010. The petition will be treated under 37 CFR 1.705(d). Patentees request the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred seventy-one (871) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by eight hundred seventy-one (871) days is **GRANTED to the extent indicated herein.**

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. 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.

On September 7, 2010, the above-identified application matured into U.S. Patent No. 7,790,957 with a patent term adjustment of 751 days.

This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 1.705(d). The Office acknowledges receipt of the $200.00 fee set forth in 37 CFR 1.18(e).

As stated above, the patent issued with a revised Patent Term Adjustment of 751 days. The PTA of 787 days was reduced by 120 days pursuant to 37 C.F.R. § 1.704(c)(10) for the submission of a request for corrected filing receipt on March 25, 2010 after the mailing of the Notice of Allowance.

The reduction of 120 days is at issue. Patentees contend that applicants did not engage in behavior that reasonably would be considered as failing in efforts to conclude prosecution of the application by filing a request for corrected filing receipt on March 25, 2010.

The reduction has been considered and a reduction, albeit a different length of reduction, is warranted.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four-months;

It is noted that a request for a corrected filing receipt is not listed among the papers filed after allowance that are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001) and MPEP 2732.

It is noted that on November 25, 2009, applicants requested that the filing receipt be corrected to list the correct spelling of the assignee's name. The Office failed to make the correction on the corrected filing receipt, mailed November 27, 2009. Applicants have not alleged non-receipt of the November 27, 2009 corrected filing receipt. Applicants should have submitted a subsequent request for corrected filing receipt promptly after receiving the November 27, 2009 corrected filing receipt. Applicants waited several months to file a subsequent request to correct the assignee's name.

The period of reduction, per 37 CFR 1.704(c)(10)(i) is 5 days, beginning on March 25, 2010, the date the request for corrected filing receipt was filed, and ending on March 29, 2010, the mailing date of the corrected filing receipt. As such, a period of reduction of 5 days is being entered and the 120 day period of reduction is being removed.

The correct patent term adjustment is 866 days, which is the sum of 441 days of delay under 35 U.S.C. § 154(b)(1)(A) and 584 days of delay under 35 U.S.C. § 154(b)(1)(B), reduced by 159 days of Applicant delay.

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

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred sixty-six (866)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

CC: LAHIVE & COCKFIELD, LLP
FLOOR 30, SUITE 3000
ONE POST OFFICE SQUARE
BOSTON MA 02109

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,790,957 B2

DATED : **September 7, 2010** **DRAFT**

INVENTOR(S) : Nishimura 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 U.S.C. 154(b) by 751 days

Delete the phrase "by 751 days" and insert – by 866 days--

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AUG 30 2011

PCT LEGAL ADMINISTRATION

GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE STREET
EXCHANGE PLACE
BOSTON MA 02109-2881

In re Application of
Liu et al.
Application No. 10/566,686
PCT No.: PCT/US04/24747
Int. Filing Date: 29 July 2004
Priority Date: 31 July 2003
Atty. Docket No.: MIT-166
For: Method And Structure Of Strain Control Of SiGe Based Photodetectors And Modulators

DECISION

This is in response to the refund requests filed on 28 November 2007 and 16 March 2011.

BACKGROUND

This international application was filed on 29 July 2004, claimed a priority date of 31 July 2003, and designated the United States. The 30 month time period for paying the basic national fee in the United States expired at midnight on 31 January 2006. Applicants filed *inter alia* the basic national fee on 31 January 2006.

On 22 May 2006, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b).

On 24 July 2006, applicants filed a response, including a declaration.

On 26 February 2007, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed, indicating the declaration to be defective because it appeared "to be a compilation."

On 08 March 2007, applicants filed a response, including a declaration.

On 06 September 2007, a Filing Receipt and a Notice of Acceptance (Form PCT/DO/EO/916) showing a 35 U.S.C. 371(c)(1), (2) and (4) date of "03/08/2007" were mailed to applicants.

DISCUSSION

Counsel requests refund of the $2160.00 extension of time fee charged to Deposit Account 07-1700 on 06 September 2007. Counsel argues that "the Response was timely filed within the one-month time limit" set by the Notification of Defective Response. Review of the record reveals that the response filed on 08 March 2007 was filed within the one month time

limit set therein. Accordingly, no extension of time under 37 CFR 1.136(a) was necessitated by that response. As such, it would be appropriate to grant the requested relief.

Further inspection of the declaration filed on 08 March 2007 reveals that it names "Samerkhae Jongthammanurak" and "David T. Danielson" in place of "JONGTHANMANURAK, Samerkhea" and "DANNIELSON, David, T." nominated in the published international application, and that no explanation of these discrepancies has been provided. Since the declaration filed on 08 March 2007 did not fully satisfy the requirements set by the Notification of Missing Requirements and the Notification of Defective Response, this application stands **ABANDONED** with respect to the national stage in the United States. Moreover, since the declaration as filed does not satisfy the requirements of 37 CFR 1.497(a) and (b), the Filing Receipt and Notice of Acceptance mailed on 06 September 2007 were issued prematurely, and both are hereby **VACATED**.

Counsel may wish to file a petition under 37 CFR 1.137(b), along with a submission resolving the discrepancies in the inventors' names.

DECISION

The request is **GRANTED** to the extent described herein.

The application stands **ABANDONED**.

The $2,160.00 (fee code 1255) charged on 06 September 2007 will be refunded to Deposit Account no. 07-1700, as authorized by counsel.

Any response to this Decision must be filed within **TWO (2) MONTHS** of the mailing date of this Decision, extendable under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 20 2011
OFFICE OF PETITIONS

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

In re Patent No. 7,539,178	:	
Issue Date: May 26, 2009	:	
Application No. 10/566,778	:	DECISION ON PETITION
Filed: January 31, 2006	:	
Attorney Docket No. 2003P11526	:	

This is a decision on the Petition Under 37 C.F.R. 1.183 and Request For Certificate Of Correction Of Patent For Applicant's Mistake (37 C.F.R. 1.323), filed February 10, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to accept the omission of assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present Petition was submitted to add the omission of assignee's name on the previously submitted PTOL-85B and such error was inadvertent. Accordingly, petitioner urges that a Certificate of Correction (PTO/SB/44) be issued to add the omitted assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. The Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) that was submitted with Petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,539,178.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
WACKER DRIVE STATION, WILLIS TOWER
CHICAGO IL 60606-1080

In re Application of
Vladimir Koifman, et al.
Application No. 10/566,783
Filed: January 17, 2007
Attorney Docket No. 40007531-0001-002

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 1, 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 January 5, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight April 5, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney documents must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3213.

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 August 1, 2010.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Oren Reches
211 North Union Street
Suite 100
Alexandria, VA 22314

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NOVO NORDISK, INC.
INTELLECTUAL PROPERTY DEPARTMENT
100 COLLEGE ROAD WEST
PRINCETON NJ 08540

MAILED

SEP 08 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Radmer et al.	:	
Application No. 10/566,795	:	
Filed: August 30, 2006	:	
Attorney Docket No. 6710.204-US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 2, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and 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 3763 for further processing of the Request for Continued Examination under 37 CFR 1.114 filed concurrently with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WENDEROTH, LIND & PONACK L.L.P.
1030 15TH STREET, N.W.
SUITE 400 EAST
WASHINGTON, DC 20005-1503

MAILED
MAY 27 2011
OFFICE OF PETITIONS

In re Patent No. 7,885,894	:	
Issue Date: February 8, 2011	:	
Application No.: 10/566,836	:	ON PETITION
Filed: February 2, 2006	:	
Attorney Docket No.: 2006_0114A	:	

This is a decision in response to a petition filed April 19, 2011, 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) 272-3204. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	10566847
Filing Date	16-Aug-2006
First Named Inventor	Briant Benson
Art Unit	3727
Examiner Name	LAURA GUIDOTTI
Attorney Docket Number	200400034
Title	METHODS AND MATERIALS FOR MAKING A MONOLITHIC POROUS PAD CAST ONTO A ROTATABLE BASE

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.
- [x] 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.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

- (●) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- ( ) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/John E. Pillion reg. #52122/
Name	John E. Pillion
Registration Number	52122

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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Decision Date : June 16,2011

In re Application of :

Briant Benson

Application No : 10566847

Filed : 16-Aug-2006

Attorney Docket No : 200400034

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed June 16,2011 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic 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 the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

Office of Petitions

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SNR DENTON US LLP
P.O. BOX 061080
CHICAGO, IL 60606-1080

MAILED

JAN 27 2011

OFFICE OF PETITIONS

In re Application of :
Natan BARON, et *al.* :
Application No. 10/566,920 : DECISION ON PETITION
Filed: January 9, 2007 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **40007531-0002-002** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 12, 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, August 18, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 19, 2009.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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) an adequate statement of unintentional delay.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. The Revocation of Power of Attorney filed March 19, 2008 was rejected for failure to comply with the requirements of 37 CFR 3.73(b) and therefore not considered. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document along with statement under 37 CFR 3.73(B) 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 Monica A. Graves at (571) 272-7253.

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 August 12, 2010.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **OREN RECHES**
211 NORTH UNION STREET, SUITE 100
ALEXANDRIA, VA 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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BASF AKTIENGESELLSCHAFT
CARL-BOSCH STRASSE 38, 67056 LUDWIGSHAFEN
LUDWIGSHAFEN 69056 DE GERMANY

MAILED
MAR 22 2011
OFFICE OF PETITIONS
ON PETITION

In re Application of :
Hohener :
Application No. 10/567,203 :
Filed: February 3, 2006 :
Attorney Docket No. HF/15-22936/A/PCT :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 16, 2011, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned March 22, 2010 for failure to timely submit a proper reply to the final Office action mailed December 21, 2009. No petition for extension of time for reply was filed. Notice of Abandonment was mailed July 19, 2010.

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 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 fee and submission required by 37 CFR 1.114; (2) the required petition fee; and (3) a proper 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.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, practitioner's signature appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If practitioner desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to practitioner, the petitioner herein. However, until otherwise instructed, all future correspondence

regarding this application file will be directed solely to the above-noted correspondence address of record.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

CC: DAVID LAPRAIRIE
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak, MI 48067--255

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RANDOLPH A SMITH
SMITH PATENT OFFICE
1901 PENNSYLVANIA AVE NW
SUITE 901
WASHINGTON DC 20006

MAILED

NOV 23 2011

OFFICE OF PETITIONS

In re Application of
Takuji Maeda et al.
Application No. 10/567,241
Filed: January 4, 2007
Attorney Docket No. 0074/065001

: ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed November 9, 2011, 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 November 19, 2010. A response was filed April 19, 2011 with a two month extension of time, but by Advisory Action of May 4, 2011, petitioner was advised that the response did not place the application in condition for allowance. An amendment was filed May 19, 2011 with a three month extension. As the amendment did not place the application in condition for allowance, an Advisory Action was mailed June 2, 2011. Thereafter on June 9, 2011, a Notice of Abandonment was mailed.

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

This matter is being referred to Technology Center 2187 for processing of the RCE.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

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

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

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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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Date Mailed: October 26, 2010
Patent No. : 7,691,171 B2
Ser. No. :10/567303
Issued :April 6, 2010
Inventor(s) Chandrika Varadachari :
Title PROCESS FOR THE MANUFACTURE OF BIO-RELEASE IRON-MANGANESE FERTILIZER

Request for Certificate of Correction

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

Assignees' names and addresses (assignment data, attorney agent/firm) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.17(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: (571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Magdalene Talley
For Mary F. Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(571) 272-0423

Volpe and Koenig
United Plaza
30 South 17th Street
Phhiladelphia, PA 19103-4009

MD/mt

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

MAILED
AUG 11 2010
OFFICE OF PETITIONS

In re Application of :
Makoto Sawada :
Application No. 10/567,328 : ON PETITION
Filed: April 13, 2007 :
Attorney Docket No. 084335-0201

This is a decision on the petition, filed August 10, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 21, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 1646 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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LACKENBACH SIEGEL, LLP
LACKENBACH SIEGEL BUILDING
1 CHASE ROAD
SCARSDALE NY 10583

MAILED
AUG 16 2010
OFFICE OF PETITIONS

In re Application of :
Carlos Manuel Miyares Cao, et al. :
Application No. 10/567,412 : DECISION ON PETITION
Filed: April 1, 2008 :
Attorney Docket No. LEX.P37 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 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 June 23, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight September 23, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3213.

This application is being referred to Technology Center AU 1614 for appropriate action by the Examiner in the normal course of business on the reply received July 8, 2010.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,438	02/07/2006	Ernest Grimberg	31322	5035

67801 7590 03/23/2012
MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON, VA 22215

EXAMINER
GREEN, YARA B

ART UNIT	PAPER NUMBER
2884	

MAIL DATE	DELIVERY MODE
03/23/2012	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Martin D. Moynihan
PRTSI, Inc
P. O. Box 16446
Arlington, VA 22215

In re Application of:
Ernest Grimberg
Serial No.: 10/567438
Filed: 07 February 2006
Attorney Docket No.:**31322**

DECISION ON PETITION
FOR USE OF COLOR DRAWINGS UNDER 37
C.F.R 1.84(a)(2)

This is a decision in response to the petition under 37 C.F.R. 1.84(a)(2) filed 07 February 2006. The petition fee has been paid.

The petition is **DENIED**.

37 C.F.R. 1.84 states that color photographs will be accepted "in utility and design patent applications if the conditions for accepting color drawings and black and white photographs have been satisfied. See paragraphs (a)(2) and (b)(1) of this section."

Paragraph (a)(2) states:

- " (a) *Drawings*. There are two acceptable categories for presenting drawings in utility and design patent applications.

  - (2) *Color*. On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule **11.13**), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph **explaining why the color drawings are necessary**. Any such petition must include the following:

- (i) The fee set forth in § **1.17(h)**;
- (ii) Three (3) sets of color drawings;
- (iii) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Paragraph (b) (1) states:

- (b) *Photographs.*—

  - (1) *Black and white* photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (*e.g.*, immunological, western, Southern, and northern), auto-radiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.

The Petition does not set forth an explanation regarding why the color photographs are necessary but does provide the required fee, three sets of drawings and the required paragraph provided in the specification.

Accordingly, the color drawings are not accepted as formal drawings in the above-referenced application.

David P. Porta, Supervisor
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,453	07/18/2006	Matthew David Osborne	BJS-620-412	4519

23117 7590 10/26/2011
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER
MARVICH, MARIA

ART UNIT	PAPER NUMBER
1633	

MAIL DATE	DELIVERY MODE
10/26/2011	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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OCT 2 6 2011

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of:	:
Osborne et al.	:
Serial No.: 10/567,453	: PETITION DECISION
Filed: February 7, 2006	:
Attorney Docket No.: **BJS-620-412**	:

This is in response to the "request" filed October 13, 2011, which request is being treated as a petition under 37 CFR § 1.181, requesting a new action and consideration of evidence of record.

BACKGROUND

Relevant parts of the prosecution history are summarized below.

The examiner mailed to applicants a non-final Office action on October 5, 2011. Claims 1, 4, 9, 10, 13-16, 33, 36, 41 and 45-50 were pending and were rejected. Claims 1, 4, 9, 10, 13-16, 33, 36, 41 and 45-50 were rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al. in view of Gorfien et al.

In response thereto, applicants filed this petition on October 13, 2011 under 37 CFR § 1.181, requesting a new Office action of October 5, 2011.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on October 13, 2011, applicants state "A new Action is requested, with the date for response re-set from the mailing of the new Action, and withdrawal of the Office Action of October 5, 2011, as the Office Action of October 5, 2011 fails to consider the Declaration evidence filed July 6, 2011 (Declaration of Non-Obviousness Under 37 C.F.R. s103 of Raymond Field)." Applicants further point out "In not considering the earlier presented evidence, the Office Action of October 5, 2011 is incomplete and a new Action is requested with the date re-set from the mailing of the new Action."

Applicant's points are well-taken and are persuasive that the Office action of October 5, 2011 is incomplete.

DECISION

The petition is **GRANTED.**

The Office action mailed October 5, 2011 is hereby vacated and withdrawn. This application will be forwarded to the examiner to take an action consistent with the decision herein, namely issuance of a new and complete Office action wherein the Declaration is addressed in detail.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

JMStone

Jacqueline Stone
Director, Technology Center 1600

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Franz FLORSCHUTZ
Kreinbarg 4
Kiel, D-24114
Germany

MAILED
FEB 28 2011
PCT LEGAL ADMINISTRATION

In re Application of
FLORSCHUTZ, Franz
Application No.: 10/567,525
PCT No.: PCT/DE2004/001740
Int. Filing Date: 04 August 2004
Priority Date: 12 August 2003
Attorney Docket No.: None
For: SYNCHRONOUS PEDAL CRANK FOR BICYCLES OR SIMILAR

DECISION

This decision is in response to the documents filed 06 December 2010 which are treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181. No fee is required.

BACKGROUND

On 13 February 2008, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee of $65.00 as set forth in 37 CFR 1.492(h) was required. A two-month time limit in which to respond was set with extensions of time available pursuant to 37 CFR 1.136(a).

On 17 November 2010, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed for failing to respond to the Form PCT/DO/EO/905 mailed 13 February 2008 within the time period set therein.

On 06 December 2010, applicant filed the subject response which was accompanied by, *inter alia*, documentary evidence that a check of $375.00 was sent to the USPTO on 13 February 2008. Applicant also claims that a declaration was filed in the international application pursuant to PCT Rule 4.17(iv).

DISCUSSION

A review of international application PCT/DE2004/001740 shows that a declaration pursuant to PCT Rule 4.17(iv) was provided with the initial PCT Request on 04 August 2004. This declaration is acceptable. Applicant also provided $375.00 in fees in the above-captioned national stage application on 17 March 2008.

Therefore, the Form PCT/DO/EO/909 was sent by mistake.

CONCLUSION

Applicant's petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 17 November 2010 is **VACATED**.

This application is being forwarded to the DO/EO/US for further processing in accordance with this decision.

James Thomson

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

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MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
Suite 201
WESTFIELD NJ 07090

MAILED
MAY 1 8 2011
OFFICE OF PETITIONS

In re Application of	:	
Michael Gerrits, et al.	:	
Application No. 10/567,544	:	DECISION ON PETITION
Filed: October 20, 2008	:	
Attorney Docket No. 7003/49	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 14, 2011, 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 December 1, 2009, 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 January 2, 2010. The Notice of Abandonment was mailed June 7, 2010.

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 $810, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 1656 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO IL 60606-6357

MAILED
AUG 26 2011
OFFICE OF PETITIONS

In re Application of	:	DECISION ON APPLICATION
ALITALO et al.	:	FOR PATENT TERM ADJUSTMENT
Application No. 10/567,630	:	
Filed: May 30, 2006	:	
Atty Docket No. 28113/39467A	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT RECALCULATION UNDER 37 C.F.R. § 1.705(b)" filed August 16, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 43 days to 883 days.

The request reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance is **DISMISSED**.

In the present petition, applicants dispute the period of adjustment of 169 days pursuant to 37 CFR 1.702(a)(1) for the Office's failure to mail at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371. Applicants contend that the Office incorrectly calculated the period of adjustment beginning on July 31, 2007, the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371, and ending on January 15, 2008, the date of mailing of a Restriction Requirement. Applicants argue that "[n]either this restriction requirement, nor three more that followed it, are the proper 'first action' for purposes of calculating PTA that accrued under 37 CFR 1.702(a)(1)." *Petition, p. 3.* Applicants assert that "[t]he prosecution history demonstrates that the Office issued four improper restriction requirements (from January 15,

2008 to July 31, 2009), that were vacated." *Id.* Applicants state that the first Office action was not mailed until January 21, 2010. Applicants contend that the period of adjustment pursuant to 37 CFR 1.702(a)(1) should be 906 days, calculating the days in the period beginning on July 31, 2007, the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371, and ending on January 21, 2010, the date of mailing of the non-final Office action.

Furthermore, applicants dispute the determination of Applicant delay as 163 days. Applicants argue:

> [O]nly 60 of those days were properly chargeable to the Applicants (48 days ending 12-00-2010; and 12 days ending 05-03-2010). The other 103 days charged against the Applicants all related to the vacated Office actions. Because those actions have been vacated for purposes of PTA, it was not proper to charge the Applicants with the 30 + 42 + 31 days of delay set forth in the Office's preliminary calculation. Applicants should not be charged with delay in responding to vacated (void) Office actions.

Petition, p. 4.

Applicants' arguments have been considered but are not persuasive.

The vacatur of an Office action sets aside or withdraws any rejection, objection or requirement in an Office action, as well as the requirement that the applicant timely reply to the Office action to avoid abandonment under 35 U.S.C. § 133. The vacatur of an Office action signifies that the Office action has been set aside, voided, or withdrawn as of the date of the vacating Office action or notice. The vacatur of an Office action, however, does **not** signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action. The patent examination process provided for in 35 U.S.C. §§ 131 and 132 contemplates that Office actions containing rejections, objections or requirements will be issued, and that the applicant will respond to these Office action, "with or without amendment." (35 U.S.C. § 132(a)). The mere fact that an examiner or other USPTO employee upon further

reflection determines that an Office action, or that a rejection, objection or requirement in an Office action, is not correct and must be removed does not warrant treating the Office action as void *ab initio* and as if the USPTO had never issued the Office action.[1]

The USPTO appreciates that there may be situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action. However, these would be extremely rare situations, such as the issuance of an Office action or notice by an employee who does not have the authority to issue that type of Office action or notice, the issuance of an Office action or notice in the wrong application, or the issuance of an Office action or notice containing language not appropriate for inclusion in an official document. In essence, the situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action are the situations in which it is appropriate to expunge an Office action or notice from the USPTO's record of the application. That is simply **not** the case in this situation.

Pursuant to 35 U.S.C. § 154(b)(1)(A)(i)(II), applicants are entitled to day-to-day adjustment if the USPTO delays the issuance of a patent by failing to mail at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371. The record of the above-identified application indisputably indicates that the USPTO mailed a notification under 35 U.S.C. 132 in the form of a Restriction Requirement on January 15, 2008, fourteen months and 169 days after the date on which the application fulfilled the requirements of 35 U.S.C. 371, July 31, 2007. The fact that the Office later set aside the Restriction Requirement of January 15, 2008, does not negate the fact that the Office acted and mailed a notification under 35 U.S.C. 132 on January 15, 2008, within the meaning of 35 U.S.C. § 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1).

---

[1] The Office notes that the Supervisory Patent Examiner was without authority to make a determination that the Restriction Requirements should not be used to calculate Patent Term Adjustment.

Unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Restriction Requirement entered by the examiner on January 15, 2008, was properly used to determine whether the USPTO

delayed the issuance of a patent by failing to mail at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 pursuant to 35 U.S.C. § 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1). *See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 *Fed. Reg.* 54366 (Sept. 18, 2000) (final rule).

Similarly, unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Restriction Requirements entered by the examiner on January 15, 2008 and December 10, 2008 were properly used to determine the period of time during which applicants failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application.

In view thereof, no change in the initial determination of patent term adjustment is merited. The patent term adjustment at the time of the mailing of the notice of allowance remains 43 days.

The Office acknowledges the $200.00 fee set forth in 37 CFR 1.18(e).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicant approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This 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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,733	02/10/2006	Kenichi Nishizawa	285995US26PCT	7700

22850 7590 11/30/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
PARENDO, KEVIN A

ART UNIT	PAPER NUMBER
2823	

NOTIFICATION DATE	DELIVERY MODE
11/30/2010	ELECTRONIC

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

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

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

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

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COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
www.uspto.gov

Paper Number: 20101123

Lawrence Aaronson (38,369)
12850 Highway 9
Suite #600 PMB 338
Alpharetta, GA 30004

In re Application of:	:	
Jeral Garcia Estupinan *et al.*	:	DECISION ON PETITION
Serial No.: 11/499,204	:	FOR USE OF COLOR DRAWINGS UNDER 37
Filed: 08/07/2006	:	C.F.R 1.84(a)(2)
Attorney Docket No.: **TWCI-0065**	:	

This is a decision in response to the updated petition under 37 C.F.R. 1.84(a)(2), filed 10/23/2010. The petition fee has been paid.

The petition is **GRANTED**.

The Petition sets forth an explanation regarding why the color drawings are necessary, the required fee, the required paragraph is provided in the specification and includes three sets of color drawings.

Accordingly, the color drawings are accepted as formal drawings in the above-referenced application.

Drew A. Dunn, Supervisory Patent Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,733	02/10/2006	Kenichi Nishizawa	285995US26PCT	7700

22850 7590 12/03/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
PARENDO, KEVIN A

ART UNIT	PAPER NUMBER
2823	

NOTIFICATION DATE	DELIVERY MODE
12/03/2010	ELECTRONIC

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

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

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

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

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Paper No. 111810

Steven P. Weihrouch
Oblon, Spivak McClellelan,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

Appl No.: 10/567,733 :
Inv: Nishizawa et al. : **DECISION ON PETITION**
Filed: February 10, 2006 : **UNDER** *37 CFR 1.181*
For: Fluorine Doped Carbon Films Produced by Modification: by Radicals

This is a decision on the applicant's "Petition to Invoke Supervisory Authority to Compel the Examiner to Consider an Informational Disclosure Statement". The applicant requests that the prior art statement filed February 10, 2006 be considered and an indication as such be provided to the applicant so as to complete the file.

The petition is hereby **granted**.

The application is being forwarded to the examiner to consider and mail the appropriate paperwork indicating the consideration of the references.

Matthew S. Smith
Supervisory Primary Examiner
Technology Center 2800

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 08/11/11

TO SPE OF : ART UNIT 1637

SUBJECT : Request for Certificate of Correction for Appl. No.: 10567808 Patent No.: 7919238

C_of_C mailroom date: 08/02/11

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
You can fax the Directors/SPE response to 571-273-3421

Note: _

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Comments: _____

_____

_____

_____

_____

Gary Brozen 9/1/2011

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/22/2011

TO SPE OF : ART UNIT 1635 Calomita Heather (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/567879 Patent No.: 7910567

CofC mailroom date: 4/8/2011

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

Certificates of Correction Branch
703-756-1571 _____

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: _____

/Heather Calamita/
SPE

1635
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

Cervitech, Inc.
c/o NuVasive, Inc.
7475 Lusk Blvd.
San Diego CA 92121

MAILED
AUG 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Keller	:	
Application No. 10/567,966	:	
In re Patent No. 7,927,337	:	DECISION ON PETITION
Filing Date: February 10, 2006	:	PURSUANT TO 37 C.F.R.
Issue Date: April 19, 2011	:	§ 3.81(B)
Attorney Docket Number: 368US1	:	
Title: BONE SEPARATOR	:	

This is a decision on the petition pursuant to 37 C.F.R. § 3.81(b), filed August 8, 2011, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

The petition is **GRANTED** to the extent that a Certificate of Correction will be issued, correcting the Assignee information to "Cervitech, Inc."

With this petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. Petitioner has requested that the name of the Assignee should be changed from NuVasive, Inc. to Cervitech, Inc.

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

> (b) After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in 3.11 before issuance of the patent, and must include a request for a certificate of correction under 1.323 of this chapter (accompanied by the fee set forth in 1.20(a)) and the processing fee set forth in 1.17(i) of this chapter.

Petitioner has set forth that the assignment was submitted for recordation as set forth in 37 C.F.R. § 3.11 before issuance of the patent, and Office records confirm that an assignment was received in the Office on February 21, 2006, listing Cervitech, Inc. as the Assignee.

Payment of the required $100 certificate of correction fee and the $130 processing fee is acknowledged.

The Certificates of Correction Branch will be notified of this decision so that the requested Certificate of Correction can be issued, correcting the Assignee information to "Cervitech, Inc."

The Certificates of Correction Branch will note that Petitioner has further requested the correction of text in the specification of the patent.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Robert D. Shedd, Patent Operations
THOMSON Licensing LLC
P.O. Box 5312
Princeton NJ 08543-5312

MAILED
SEP 02 2011
OFFICE OF PETITIONS

In re Application of

Christensen :

Application No. 10/568,035

: DECISION ON PETITION

Filed: February 10, 2006

:

Attorney Docket No. PUO30245

This is a decision on the petition under 37 CFR 1.137(b), filed August 19, 2011, 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, May 13, 2010, 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 August 14, 2010. A Notice of Abandonment was mailed December 7, 2010.

The amendment filed August 19, 2011, is noted.

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

The application is being forwarded to Technology Center 2400, GAU 2467 for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Robert B. Levy
2 Independence Way
Princeton, NJ 08543

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FIVE MOORE DR., PO BOX 13398
MAIL STOP: C2111.2F
RESEARCH TRIANGLE PARK NC 27709-3398

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MAR 08 2012
OFFICE OF PETITIONS

In re Application of :
Miller et al. :
Application No. 10/568,051 : DECISION ON PETITION
Filed: February 10, 2006 :
Attorney Docket No. PR60436USW :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 7, 2012, to revive the above-identified application.

The petition is **DISMISSED**.

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

This above-identified application became abandoned for failure to file a response to a Notice to File Corrected Application Papers, which was mailed on October 13, 2011. The Notice to File Corrected Applications set a two (2) month period for reply. Accordingly, this application became abandoned on December 14, 2011. A Notice of Abandonment was mailed on January 24, 2012.

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).

As to item (1) a review of the drawings shows they do not meet the requirements of 37 CFR 1.121. When the Office receives replacement sheets of drawings for patent applications after the application has been filed, a cover letter identifying the drawings by application number should accompany them. The application number and other identifying indicia should be placed on each

sheet of drawings in accordance with 37 CFR 1.84(c). Each drawing sheet submitted after the filing date of the application must be identified as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

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

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

By 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) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAIL STOP: C2111.2F
RESEARCH TRIANGLE PARK NC 27709-3398

In re Application of	:	
Miller et al.	:	
Application No. 10/568,051	:	DECISION ON PETITION
Filed: February 10, 2006	:	
Attorney Docket No. PR60436USW	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 27, 2012, to revive the above-identified application.

The petition is **Granted**.

This above-identified application became abandoned for failure to file a response to a Notice to File Corrected Application Papers, which was mailed on October 13, 2011. The Notice to File Corrected Applications set a two (2) month period for reply. Accordingly, this application became abandoned on December 14, 2011. A Notice of Abandonment was mailed on January 24, 2012. A petition filed under 37 CFR 1.137(b) was dismissed on March 8, 2012.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of replacement drawings, (2) the petition fee of $1860.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Data Management for appropriate action in the normal course of business

Charlema Grant
Attorney Advisor
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

QUARLES & BRADY
411 E. WISCONSIN AVE.
MILWAUKEE, WI 53202

In re Application of
Esmaiel Jabbari, et al.
Application No. 10/568,058
Filed: May 7, 2008
Attorney Docket No.: 630666.00010

ON PETITION

This is a decision in response to the petition, filed October 18, 2010, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Daniel Pollmann appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. A courtesy copy of this decision is being mailed to petitioner; however, if Attorney Pollmann 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 is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 19, 2009, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). A Notice of Abandonment was subsequently mailed on March 17, 2010. On October 18, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the response in the form of an election of the invention to be examined; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay[1].

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for

[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.

response has expired. Since, no extension of time fees are due on a petition for revival, petitioner is entitled to a refund of the $65 extension fee included with this petition.

Any request for refund must included a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

The application is being referred to Technology Center AU 1615 for appropriate action by the Examiner in the normal course of business on the reply received July 20, 2009.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: DANIEL L. POLLMANN
1507 W PARKSIDE LANE
PHOENIX, AZ 85027

Doc Code: PET.RELIEF
Document Description: Certification and Request for Disaster Relief

PTO/SB/425 (03-11)

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable): 10/568,064	Patent Number (if applicable):
First Named Inventor: Akira SHIMOTOYODOME	Title of Invention: ENDURANCE IMPROVING AGENT

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:

   a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.

   b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding on March 11, 2011.

   c. The statutory or non-statutory time period set for response has not yet expired.

   d. Withdrawal and reissuance of the Office communication is requested.

   e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.

   f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:

   a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.

   b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.

   d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):

   a. The maintenance fee payment was required to have been paid after March 10, 2011.

   b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 – Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).

   c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.

   e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).

   f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. *See* 35 U.S.C 41(c).

   g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:

   a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.

   b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.

   d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature	Date 6/15/11
Name (Print/Typed) Vincent K. Shier, Ph.D.	Practitioner Registration Number 50,552

***Note**: Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.*

☐ *Total of 1 forms are submitted.

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

MAILED
JUN 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Shimotoyodome et al.	:	
Application No. 10/568,064	:	DECISION ON PETITION
Filed: February 13, 2006	:	
Attorney Docket No. 282148US0PCT	:	

This is a decision on the request filed June 15, 2011, seeking relief under the provisions of "Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Catastrophic Events of March 11, 2011 in Japan," 1365 Off. Gaz. Pat. Office 170 (April 19, 2011).

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on February 15, 2011. The instant petition was filed prior to the expiration of the period for reply and the certifications for granting of relief are considered to be met by the submission of the request.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to the Technology Center, Art Unit 1628 for re-mailing the Office action of February 15, 2011. The period for reply will run from the mailing date of the Office action.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,183	02/13/2006	Behnam Azvine	36-1956	5484

23117 7590 02/22/2012
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER
GLASS, RUSSELL S

ART UNIT	PAPER NUMBER
3687	

NOTIFICATION DATE	DELIVERY MODE
02/22/2012	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):

PTOMAIL@nixonvan.com
clm@nixonvan.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FEB 21 2012

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD
11TH FLOOR
ARLINGTON, VA 22203

In re Application of: Behnam Azvine et al. Application No. 10/568,183 Filed: February 13, 2006 For: DIARY MANAGEMENT METHOD AND SYSTEM	**DECISION ON PETITION FOR WITHDRAWAL OF "FINAL" DESIGNATION TO LAST OFFICE ACTION**

This decision is in response to the petition filed on December 27th, 2010 entitled "REQUEST FOR WITHDRAWAL OF 'FINAL' DESIGNATION TO LAST OFFICE ACTION."

The petition is **DISMISSED as MOOT**.

File History

A non-final Office action was mailed on April 27th, 2010 rejecting claims 1-40 under 35 U.S.C. 102(a) as being anticipated by Srinivasa, U.S. Pub. No. US 2003/0115189.

In the response to said non-final Office action dated August 23, 2010, the applicant submitted remarks and amended claims 1 (independent), 10, 12 (independent) and 21.

A final Office action was mailed on December 17th, 2010 that rejected all claims under a new grounds of rejection. The Examiner withdrew the previous rejection under 35 U.S.C. 102 and made a new rejection of claims 1-40 under 35 U.S.C. 103(a) as being unpatentable by Srinivasa, U.S. Pub. No. US 2003/0115189. The Examiner noted that applicant's amendment necessitated the new grounds of rejection presented in the final Office action.

Claim 1 was amended as follows:

1. (Currently Amended) A system for deriving a user model from a plurality of event records relating to events, each event record comprising data relating to attributes of an event, the system comprising:

identifying means for identifying a plurality of sequences of event records from said plurality of event records, each sequence containing two or more event records;

clustering means for determining a plurality of sequence clusters from said plurality of sequences, each sequence cluster comprising a plurality of related sequences;

rule deriving means for ~~analysing~~ analyzing the sequences in each of a plurality of said clusters and deriving one or more rules relating to the sequences of ~~that~~ each said cluster; and

user modelling means for storing rules derived in relation to separate clusters and for providing a user model comprising rules derived in relation to a plurality of clusters.

Claim 12 was amended as follows:

12. (Currently Amended) A method of deriving a user model from a plurality of event records relating to events, each event record comprising data relating to attributes of an event, the method comprising:

identifying a plurality of sequences of event records from said plurality of event records, each sequence containing a plurality of event records;

determining a plurality of sequence clusters from said plurality of sequences, each sequence cluster comprising a plurality of related sequences;

~~analysing~~ analyzing the sequences in each of a plurality of clusters and deriving one or more rules relating to the sequences of each said ~~that~~ cluster; and

providing a user model based on rules derived in relation to a plurality of clusters.

The Instant Petition

The instant petition requests reconsideration of the finality of the final Office action of December 17th, 2010. The instant petition states that the only amendment made by applicants (other than correcting the spelling of the word "analyzing" to the "American" form) was to change "in a cluster" to the phrase "in each of a plurality of said clusters" and to make explicit the recitation of "that cluster" by reciting "each said cluster".

The Applicant further remarks that these amendments were merely for the purpose of ensuring that the original claims were properly interpreted and not susceptible to any possible misinterpretation. Such amendments should have not "necessitated" any change in the grounds of rejection.

Decision

A review of the file reveals that the claim amendments submitted on August 23rd, 2010 with regards to independent claims 1 and 12 changed the claimed scope to positively recite a plurality of clusters. Under present practice the finality of the Office action mailed on December 17th, 2010 was proper and was necessitated by the applicant's amendment. See MPEP 706.07(a). However, a further review of the file reveals that a "Notice of Abandonment" was mailed on October 6th, 2011 pursuant to Applicant's failure to timely file a proper reply to the Office Action mailed on December 17th, 2010.

The petition is therefore **DISMISSED as MOOT**.

Any questions regarding this decision should be directed to Matthew S. Gart, Supervisory Patent Examiner, at (571) 272-3955.

Gregory Vidovich, Director
Patent Technology Center 3600
(571) 272-5350

Msg/snm: 2/9/2012

SM

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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 RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: E8280.0056/P056	Patent Number: 7,661,436
Filing Date (or 371(b) or (f) Date): 10-10-2006	Issue Date: 02-16-2010
First Named Inventor: Padam Singh	
Title: LIQUID SEAL FOR RECOVERING FLARED GAS	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature Jennifer McCue	Date August 13, 2010
Name (Print/Typed) Jennifer M. McCue	Registration Number 55,440

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☑ *Total of 1 forms are submitted.

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 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Shikhar Singh
Apt. 208
916 W Victoria Ave
Montebello, CA 90840

Mail Date: 08/20/2010

Applicant	: Padam Singh	: DECISION ON REQUEST FOR
Patent Number	: 7661436	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/568,192	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/10/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **733** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7284421	2007-10-23	10568202	2006-07-11	36981

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	● 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

- ● An attorney or agent registered to practice before the Patent and Trademark Office
- ○ A sole patentee
- ○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.
- ○ A joint patentee; all of whom are signing this e-petition
- ○ The assignee of record of the entire interest

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

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Thomas H. Van Hoozer/	Date (YYYY-MM-DD)	2012-03-09
Name	Thomas H. Van Hoozer	Registration Number	32761

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 7284421
Issue Date: October 23,2007
Application No. 10568202
Filed: July 11,2006
Attorney Docket No. 36981

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

This is a decision on the electronic petition, filed March 12,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of March 12,2012 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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LUNDBECK RESEARCH USA, INC.
ATTENTION: STEPHEN G. KALINCHAK, LEGAL
215 COLLEGE ROAD
PARAMUS NJ 07652

MAILED
DEC 14 2010
OFFICE OF PETITIONS

In re Patent No. 7,772,240
Issued: August 10, 2010
Application No. 10/568,292
Filed: August 14, 2006
Dkt. No.: 463-US-PCT

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the application for patent term adjustment under 37 CFR 1.705(d) filed October 1, 2010.

The application for patent term adjustment is **GRANTED to the extent indicated herein**.

The above-identified application matured into U.S. Patent No. 7,772,240 on August 10, 2010. The patent issued with a patent term adjustment of 320 days. The instant application for patent term adjustment was timely filed within two months of the date of issuance of the patent. Patentees request that the patent term adjustment be decreased from 320 days to 184 days. In this regard, patentees assert that the period of adjustment under 37 CFR 1.702(b) to which the application is entitled is 162 days. Patentees further contest the reduction of patent term of 82 days in connection with the request filed May 21, 2010 and assert that the correct reduction is six days.

37 CFR 1.702

The patent term adjustment under 37 CFR 1.702(a)(1) is 212 days.

The initial period of adjustment pursuant to 37 CFR 1.702(b), or, "B" delay, is 380 days, from February 16, 2009 to March 2, 2010, the application having fulfilled the requirements for early commencement under 35 USC 371(f) on February 15, 2006 and a request for continued examination having been filed on March 3, 2010. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 16, 2009 and ends on March 2, 2010, the day before the RCE was filed. See, 35 U.S.C. 154(b)(1)(B)(i).

It would appear that patentees have calculated the start of the period of adjustment under 37 CFR 1.702(b) based on the date that is 30 months from the date of priority. As the requirements for

early commencement were satisfied on February 15, 2006, commencement began February 15, 2006 and the period under 37 CFR 1.702(b) began February 16, 2009.

The period of adjustment under 37 CFR 1.702(b) does not include 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. See, 37 CFR 1.702(b)(4) and 1.703(b)(4).

Accordingly, the period of adjustment of 380 days under 37 CFR 1.702(b) does not include 212 days, from August 3, 2009, the date that the Notice of Appeal was filed, to March 2, 2010, the day before the date that the RCE was filed.

37 CFR 1.704(c)(10)

Patentees contest the reduction of 82 days in connection with the request filed May 21, 2010. Patentees assert that the correct reduction in this regard is six days.

A review of the correct reduction in this regard is six days, as asserted. The reduction commenced May 21, 2010, the date that the post-allowance request was filed, and ended May 26, 2010, the date that a response thereto was issued.

CONCLUSION

In view thereof, at the time of issuance, the patent was entitled to an overall adjustment of 190 days (212 days under 37 CFR 1.702(a)(1) + 380 days under 37 CFR 1.702(b) – 212 days under 37 CFR 1.704(b)(4) – 190 days of applicant delay under 37 CFR 1.704).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

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

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 190 days.

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

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,772,240

DATED : August 10, 2010 **DRAFT**

INVENTOR(S) : Bang-Anderson, 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 320 days

Delete the phrase "by 320 days" and insert – by 190 days--

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

MAILED
OCT 08 2010
PCT LEGAL ADMINISTRATION

In re Application of NOACK :
U.S. Application No.: 10/568,338 :
PCT Application No.: PCT/EP2004/007945 :
Int. Filing Date: 16 July 2004 :
Priority Date Claimed: 13 August 2003 : DECISION
Attorney Docket No.: 2003P09398WOUS :
For: METHOD FOR BRAKING A ROTOR OF A :
TURBINE ENGINE AND A TURNING GEAR FOR :
DRIVING THE ROTOR OF A TURBINE ENGINE :

This is in response to applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 06 August 2010.

BACKGROUND

On 16 July 2004, applicant filed international application PCT/EP2004/007945, which claimed priority of an earlier European Patent Office application filed 13 August 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 03 March 2005. The thirty-month period for paying the basic national fee in the United States expired on 13 February 2006.

On 13 February 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 June 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 22 August 2006, international application PCT/EP2004/007945 became abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 06 August 2010, applicant filed the present petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment 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 was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 16 July 2004, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 06 August 2010.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Lin

Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303
Facsimile: 571-273-0459

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Patent No. 7,807,851	:	DECISION ON REQUEST FOR
GUNTHER et al.	:	RECONSIDERATION OF
Issue Date: 10/05/2010	:	PATENT TERM ADJUSTMENT
Application No. 10/568,355	:	
Filed: 08/16/2006	:	
Docket No. 2400.0200000/SRL	:	

This is a decision on the Request for Reconsideration of Patent Term Adjustment Determination Under 37 C.F.R. §1.705(d), filed on October 7, 2010, 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 thirty (730) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

In the present petition, patentee calculated the B delay incorrectly. In an international application, this period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See 1.702(b). The priority date of this application is August 18, 2003. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Saturday,

and February 20, 2006, was a federal holiday, the period expired on the subsequent business day. See PCT Rule 80.5. Accordingly, the commencement date is February 21, 2006. Thus, B delay is 591 days, counting the number of days beginning on February 22, 2009, and ending on October 5, 2010, the day the patent issued. See 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.703(b).

Accordingly, the patent term adjustment remains 591 days.

The Office acknowledges the payment of the $200.00 fee set forth in 37 CFR 1.18(e).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOX 401
TORONTO ON M5H 3Y2 CA CANADA

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FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Lalev et al.	:	DECISION ON PETITION
Application No. 10/568,409	:	TO WITHDRAW
Filed: September 26, 2006	:	FROM RECORD
Attorney Docket No. 13993-4	:	

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 28, 2011, 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 Bereskin and Parr LLP/ S.E.N.C.R.L., S.R.L. 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.

Further, a review of USPTO records reveals that the Application Data Sheet filed February 14, 2006 was improperly recorded as a Power of Attorney by the USPTO. Currently, there is no Power of Attorney in the above-identified application. However, the assignee has submitted a change of correspondence address filed January 28, 2011 and January 4, 2011 that is hereby accepted. Accordingly, all future communications from the Office will be directed to the below-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Currently, there is an outstanding Office action mailed December 8, 2010 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Atanas Iliev Lalev
49 Schroder Crescent
Guelph Ontario N1E 7B3 Canada

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FEB 24 2011

OFFICE OF PETITIONS

LUNDBECK RESEARCH USA, INC.
ATTENTION: STEPHEN G. KALINCHAK, LEGAL
215 COLLEGE ROAD
PARAMUS, NJ 07652

In re Patent of Heidi Lopez de Diego et al.	:	DECISION ON REQUEST
Patent No. 7,767,683	:	FOR RECONSIDERATION OF
Issue Date: August 3, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/568,572	:	AND NOTICE OF INTENT TO
Filing Date: August 14, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. 453-US-PCT	:	CORRECTION

This is a decision on the petition filed October 1, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one hundred fifty-five (155) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by one hundred fifty-five (155) days is **GRANTED to the extent indicated herein**.

The Office will *sua sponte* issue a certificate of correction setting forth a patent term adjustment of 112 days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing an assignee or a patentee an opportunity to be heard. Accordingly, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. In other words, if Patentees wish to file a response to the instant decision disputing the 112-day determination, the response must be filed within one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision. Extensions of time are not available under 37 C.F.R. § 1.136.

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Background

The patent issued August 3, 2010. The patent sets forth a patent term adjustment determination of 96 days, which is the sum of 212 days of delay under 37 C.F.R. § 1.703(a) ("A Delay") and

144 days of delay under 37 C.F.R. § 1.703(b) ("B Delay") reduced by 260 days of delay under 37 C.F.R. § 1.704 ("Applicant Delay").

The petition asserts the correct patent term adjustment is 155 days, which is the sum of 212 days of A Delay and 144 days of B Delay reduced by 201 days of Applicant Delay.

Issue 1

The Office issued a Notice of Allowance on March 22, 2010.

A request for a corrected filing receipt and a Supplemental Application Data Sheet ("Supplemental ADS") were filed May 24, 2007.

On May 27, 2007, the Office issued a response to the May 24, 2007 papers.

The petition asserts the Office should have entered a 4-day reduction in patent term adjustment for delay under 37 C.F.R. § 1.704(c)(10) based on the facts above.

The Office has reviewed the record and agrees the submission of the May 24, 2007 papers warrants a 4-day reduction for delay under 37 C.F.R. § 1.704(c)(10).

Issue 2

A Request to Correct Inventorship, a second Supplemental ADS ("ADS2"), and other papers were filed June 2, 2010.

On June 21, 2010, the Office issued a response to the June 2, 2010 papers.

The petition states, with emphasis in the original,

> A review of the PAIR/PALM system reveals that two entries of Applicant Delay of 20 days each have been entered with regard to the [June 2, 2010 papers], apparently running concurrently from [June 2, 2010, to June 21, 2010]. However, only one period of delay of 20 days is appropriate for this post-allowance filing.

The Office has reviewed the record and agrees the papers filed June 2, 2010, do not warrant two separate 20-day reductions in patent term adjustment under 37 C.F.R. § 1.704(c)(10). In other words, the June 2, 2010 papers only warrant a single 20-day reduction in patent term adjustment.

Issue 3

As previously noted:

1. The Office issued a Notice of Allowance on March 22, 2010,
2. A Supplemental ADS was filed May 24, 2007, and
3. ADS2 was filed June 2, 2010.

A third Supplemental ADS ("ADS3") was filed June 22, 2010.

The Office entered a 43-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) as a result of the submission of ADS3.

The petition states the submission of ADS3 should not have resulted in any reduction in patent term adjustment.

37 C.F.R. § 1.704(c)(10) states,

> [Upon] [s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed ... the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
>
> (ii) Four months.

Clarification of the Office's interpretation of the scope of 37 C.F.R. § 1.704(c)(10) is set forth in Manual of Patent Examining ("MPEP") § 2732 (8th ed., Rev. 7, July 2008). MPEP § 2732 states,

> 37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.... Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See Clarification of 37 CFR 1.704(c)(10) – Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001).
>
> The submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application:
>
> (1) Fee(s) Transmittal (PTOL- 85B);
> (2) Power of Attorney;
> (3) Power to Inspect;
> (4) Change of Address;
> (5) Change of Status (small/not small entity status);
> (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and
> (7) letters related to government interests (e.g., those between NASA and the Office).

Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include:

(1) a request for a refund;
(2) a status letter;
(3) amendments under 37 CFR 1.312;
(4) late priority claims;
(5) a certified copy of a priority document;
(6) drawings;
(7) letters related to biologic deposits; and
(8) oaths or declarations.

The petition states ADS3 changed "the email address of the practitioner and an inventor's mailing address," and contends ADS3 falls within the "Change of Address" exception listed above.

The petition states ADS3 changed "the email address of the practitioner." A review of ADS3 and ADS2 indicates ADS3 did not change the e-mail address information in the Correspondence Information section. Instead, ADS3 simply added an e-mail address into the portion of ADS3 setting forth address information for the assignee.

The petition states ADS3 changed an inventor's mailing address. However, ADS3 did not change the mailing address for any inventor. Instead, ADS3 changed the city portion of the residential address for one inventor.

Pursuant to 37 C.F.R. § 1.76(c)(2), a supplemental ADS "must identify the information that is being changed, preferably with underlining for insertions, and strike-through or brackets for text removed." ADS3 fails to identify the information that is being changed. Therefore, ADS3 was improper.

An improper supplemental ADS filed to add an e-mail address for an assignee and to change the residential address for an inventor is not a paper which falls within the previously identified "Change of Address" exception. Therefore, the entry of the 43-day reduction in patent term adjustment based on the submission of ADS3 was proper.

Conclusion

The correct patent term adjustment is 112 days, which is the sum of 212 days of A Delay and 144 days of B Delay reduced by 244 days of Applicant Delay.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **two hundred twelve (212)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,767,683 B2
APPLICATION NO.	:	10/568,572
DATED	:	August 3, 2010
INVENTOR(S)	:	Heidi Lopez de Diego et al.

DRAFT

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

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 96 days.

Delete the phrase "by 96 days" and insert -- by 112 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

Lundbeck Research USA, INC
Attention: Stephen Kalinchak,
Legal
215 College Road
Paramus, NJ

MAILED
APR 04 2011
OFFICE OF PETITIONS

In re Application of	:	
Heidi Lopez de Diego et al.	:	WITHDRAWAL OF PTA
Application No. 10/568,572	:	DECISION MAILED
Filed: August 14, 2006	:	FEBRUARY 24, 2011
Patent No. 7,767,683	:	AFTER CIVIL
Atty Docket No.	:	ACTION FILED
453-US-PCT	:	

This decision hereby **WITHDRAWS** the decision mailed on February 24, 2011 granting patentee a Patent Term Adjustment (PTA) of 112 days.

On October 1, 2010, patentee filed an application for Patent term adjustment under 37 CFR 1.705(d) requesting 155 days. On January 28, 2011 patentee filed a civil action in the District Court of the District of Columbia pursuant to 35 USC 154(b)(4)(A) requesting that patentee's PTA be adjusted to 290 days. On February 24, 2011 the petition attorney unaware of the filing of the civil action mailed a decision in response to the 37 CFR 1.705(d) petition.

Because the decision was mailed after the date of the filing of the civil action, the Office hereby withdraws the decision. The Office will not act upon any petition filed under 37 CFR 1.705(d) once civil action has been filed until such time the District Court for the District of Columbia remands the civil action back to the jurisdiction of the USPTO to address the remand order.

Accordingly, the Office hereby takes the following actions:

1. Decision mailed February 24, 2011 is withdrawn;

2. PTA calculation displayed in PAIR is readjusted to 96 days as issued.

3. Certificate of correction changing the amount of PTA to 112 as decided in the decision will not be issued.

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

/Kery Fries/

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy
Enclosure: Copy of adjusted PALM calculation

Cc: Adjusted PTA calculation

PALM INTRANET

Day : Friday
Date: 4/1/2011
Time: 09:58:36

PTA Calculations for Application: 10/568572			
Application Filing Date:	08/14/2006	PTO Delay (PTO):	356
Issue Date of Patent:	08/03/2010	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	260
Post-Issue Petitions:	0	Total PTA (days):	96
PTO Delay Adjustment:	0		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
96	04/01/2011	ADJUSTMENT OF PTA CALCULATION BY PTO		16	
92	02/23/2011	RECORD A PETITION DECISION OF GRANTED FOR PATENT TERM ADJUSTMENT AFTER ISSUE			
91	02/22/2011	ADJUSTMENT OF PTA CALCULATION BY PTO	16		
83.5	02/15/2010	PTA 36 MONTHS	144		
83	08/03/2010	PATENT ISSUE DATE USED IN PTA CALCULATION			
82	07/02/2010	EXPORT TO FINAL DATA CAPTURE			
81	07/01/2010	DISPATCH TO FDC			
80	06/22/2010	MISCELLANEOUS INCOMING LETTER		43	73
79	06/24/2010	APPLICATION IS CONSIDERED READY FOR ISSUE			
78	06/22/2010	ISSUE FEE PAYMENT VERIFIED			
77	06/22/2010	ISSUE FEE PAYMENT RECEIVED			
76	06/21/2010	EMAIL NOTIFICATION			
75	06/21/2010	EMAIL NOTIFICATION			
74	06/21/2010	FILING RECEIPT - CORRECTED			
73	06/21/2010	MAIL RESPONSE TO 312 AMENDMENT (PTO-271)			
72	06/16/2010	RESPONSE TO AMENDMENT UNDER RULE 312			
71	06/02/2010	AMENDMENT AFTER NOTICE OF ALLOWANCE (RULE 312)		20	73
69	06/02/2010	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
67	06/11/2010	PUBS CASE REMAND TO TC			
66	06/02/2010	MISCELLANEOUS INCOMING LETTER		20	
65	06/02/2010	SUPPLEMENTAL PAPERS - OATH OR DECLARATION		0	
64	05/27/2010	EMAIL NOTIFICATION			

63	05/27/2010	FILING RECEIPT - CORRECTED			
62	05/21/2010	FINISHED INITIAL DATA CAPTURE			
61	03/29/2010	EXPORT TO INITIAL DATA CAPTURE			
60	03/22/2010	MAIL NOTICE OF ALLOWANCE			
59	03/17/2010	DOCUMENT VERIFICATION			
58	03/17/2010	ISSUE REVISION COMPLETED			
57	03/17/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
56	03/15/2010	ALLOWABILITY NOTICE			
55	02/16/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
54	02/26/2010	FILING RECEIPT - CORRECTED			
53	02/16/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	49
52	02/16/2010	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
51	02/20/2010	DATE FORWARDED TO EXAMINER			
50	02/16/2010	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
48	02/20/2010	DISPOSAL FOR A RCE / CPA / R129			
47	02/16/2010	REQUEST FOR EXTENSION OF TIME - GRANTED			
46	02/16/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	02/16/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
44	10/22/2009	FILING RECEIPT - CORRECTED			
43	07/16/2009	NOTICE OF APPEAL FILED		85	41
42	07/16/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
41	01/22/2009	MAIL FINAL REJECTION (PTOL - 326)			
40	01/21/2009	FINAL REJECTION			
39	11/17/2008	DATE FORWARDED TO EXAMINER			
38	11/13/2008	RESPONSE AFTER NON-FINAL ACTION		92	36
37	11/13/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
36	05/13/2008	MAIL NON-FINAL REJECTION	212		8
35	05/12/2008	NON-FINAL REJECTION			
34	01/31/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33	02/21/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	02/12/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

30	10/09/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	08/01/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	02/21/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
24	02/12/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	02/21/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	02/12/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	10/09/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
20	10/09/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	08/01/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	01/31/2007	REFERENCE CAPTURE ON IDS			
13.7	01/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	01/31/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	09/13/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	09/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
8	08/14/2006	371 COMPLETION DATE			
7	09/06/2006	APPLICATION DISPATCHED FROM OIPE			
6	08/14/2006	ADDITIONAL APPLICATION FILING FEES			
5	08/14/2006	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			

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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EDWARDS WILDMAN PALMER LLP
P.O. BOX 55874
BOSTON MA 02205

MAILED
FEB 13 2012
OFFICE OF PETITIONS

In re Application of	:	
Borenstein, et al.	:	
Application No. 10/568,574	:	NOTICE
Filed: February 1, 2007	:	
Attorney Docket No. **61947(51588)**	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Paper No.

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

MAILED

JAN 03 2012

OFFICE OF PETITIONS

In re Application of Siegel et al. Application No. 10/568,829 In re Patent No. 7,923,500 Filing Date: October 26, 2006 Issue Date: April 12, 2011 Attorney Docket Number: 0094.064A Title: NANOCOMPOSITES WITH CONTROLLED ELECTRICAL PROPERTIES	DECISION ON PETITION PURSUANT TO 37 C.F.R. § 3.81(B)

This is a decision on the petition pursuant to 37 C.F.R. § 3.81(b)[1], filed December 15, 2011, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

With this petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. On December 15, 2011, Petitioner submitted a "Certificate of Correction" for this purpose, which requests the addition of assignee "ABB AB, Vasteras, Sweeden."

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

(b) After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in 3.11 before issuance of the patent, and must include a request for a certificate of correction under 1.323 of this chapter (accompanied by the fee set forth in 1.20(a)) and the processing fee set forth in 1.17(i) of this chapter.

1 See Official Gazette, June 22, 2004.

The present request pursuant to 37 C.F.R. § 3.81(b) was accompanied by a request for a certificate of correction, a copy of the assignment, and a copy of the notice of recordation that establishes that the assignment (which lists ABB AB of Vasteras, Sweeden as an assignee) was submitted for recordation in the Office on May 24, 2011. Office records confirm that this assignment was submitted for recordation on May 24, 2011. Petitioner has further included both the $130 petition fee and the $100 fee associated with the filing of a request for a certificate of correction.

The provisions of this title have not been complied with, and as such, the request cannot be granted. It is clear that the assignment was not submitted for recordation as set forth in 37 C.F.R. § 3.11 before the issuance of this patent. The patent issued on April 12, 2011, and the assignment was not submitted for recordation until more than one month had passed.

Hence, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 3.81(b)". 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]. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web[5].

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 undersigned.

---

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.
5 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[6]

Paul Shanoski
Senior Attorney
Office of Petitions

6 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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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York NY 10036

MAILED

AUG 16 2010

OFFICE OF PETITIONS

NOTICE

In re Patent No. 7,646,368 :
Issue Date: January 12, 2010 :
Application No. 10/568,885 :
Filed: February 21, 2006 :
Attorney Docket No. P-6111-US :

This is a notice regarding your communication for acceptance of a fee deficiency submission under 37 CFR 1.27(g)(2), which is being treated under 37 CFR 1.28.

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

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

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

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

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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GKN Driveline/TTG
c/o Kristin L. Murphy
39533 Woodward Avenue, suite 140
Bloomfield Hills MI 48304

MAILED

MAY 10 2011

PCT LEGAL ADMINISTRATION

In re Application of SCHWARZLER, et al. U.S. Application No.: 10/568,897 PCT No.: PCT/EP2004/006086 Int. Filing Date: 05 June 2004 Priority Date: 22 August 2003 For: CONSTANT VELOCITY JOINT WITH SMALL RADIAL MOVEMENTS OF THE BALLS	DECISION ON PETITIONS UNDER 37 CFR 1.137(a) AND 37 CFR 1.181

This decision is in response to applicant's "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)" filed 07 March 2011 in the United States Patent and Trademark Office (USPTO). The petition is also being alternatively considered pursuant to 37 CFR 1.181. There is no petition fee required for the petition under 37 CFR 1.181. At this time the petition fee for proceeding under 37 CFR 1.137(a) will not be charged pending applicant's response to this decision.

BACKGROUND

On 01 December 2010, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) informing applicant that the above-captioned application was abandoned as to the U.S. National stage for failure to respond to the "Notification of Missing Requirements" (Form PCT/DO/EO/905) mailed 06 July 2006.

On 07 March 2011, applicant filed the present petition under 37 CFR 1.137(a) accompanied by copies of the papers purportedly filed on 12 July 2006.

DISCUSSION

I. Petition Under 37 CFR 1.137(a)

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied by: (1) A proper response, unless already filed; (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) A

terminal disclaimer (if necessary).

Applicant is advised that as the present petition does not satisfy all of the elements detailed above, and that the circumstances provided by applicant indicate that a petition under 37 CFR1.181 to withdraw the holding of abandonment is a better course, the petition under 37 CFR 1.137(a) is **DISMISSED**.

II. Petition Under 37 CFR 1.181 to Withdraw Holding of Abandonment

37 CFR 1.8(b) states:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice the correspondence will be considered timely filed if the party who forwarded the correspondence:
>
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
>
> (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
>
> (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

With the present petition, applicant has satisfied items (1) and (2) above.

Regarding item (3), applicant has not provided a statement attesting on a personal knowledge basis to the previous timely mailing. While applicant has included a copy of the transmission report; applicant has not included a statement from Angie Moscowitz attesting to what was transmitted. As such, applicant's petition under 37 CFR 1.181 cannot be granted at this time.

CONCLUSION

Applicant's petitions under 37 CFR 1.137(a) and 37 CFR 1.181 are **DISMISSED**.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.181." No additional fee is required.

Any renewed petition filed must include a proper reply. A proper reply must include a statement attesting on a personal knowledge basis to the previous timely mailing.

Alternatively, applicant is advised that if it is too burdensome to obtain a personal statement from Ms. Moscowitz, applicant should proceed under 37 CFR 1.137(b). A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law , (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." and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). See Form PTO/SB/64/PCT.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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c/o Kristin L. Murphy
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Bloomfield Hills MI 48304

MAILED
JUN 30 2011
PCT LEGAL ADMINISTRATION

In re Application of :
SCHWARZLER, et al. :
U.S. Application No.: 10/568,897 : DECISION ON PETITION
PCT No.: PCT/EP2004/006086 :
Int. Filing Date: 05 June 2004 :
Priority Date: 22 August 2003 :
For: CONSTANT VELOCITY JOINT WITH :
SMALL RADIAL MOVEMENTS OF THE :
BALLS :

The petition to revive under 37 CFR 1.137(b) filed 20 May 2011 in the above-captioned application is hereby **GRANTED** as follows:

Applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

A review of the application file reveals that applicant has now provided an executed declaration of the inventors in response to the notice of missing requirements mailed 06 July 2006. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

The application has an international filing date of 05 June 2004 under 35 U.S.C. 363, and will be given a date of **07 March 2011** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a notice of acceptance.

Derek A. Putonen
Attorney Advisor
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BOCA RATON FL 33496

MAILED

OCT 19 2011

OFFICE OF PETITIONS

In re Application of	:	
Debra Fogel Harris	:	
Application No. 10/569,033	:	DECISION ON PETITION
Filed: February 17, 2006	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 8, 2011, 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 21, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 22, 2010. A Notice of Abandonment was mailed on September 28, 2010.

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 $930, (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 2855 for appropriate action by the Examiner in the normal course of business on the reply received October 8, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
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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NOV 04 2011

OFFICE OF PETITIONS

In re Patent No. 8,003,703	: DECISION ON
Bonnert, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/569,065	: of PATENT TERM ADJUSTMENT
Issue Date: August 23, 2011	:
Filed: February 17, 2006	:
Attorney Docket No. 06275-0495US1	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed October 21, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from zero (0) days to one hundred thirty-eight (138) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

On August 23, 2011, the instant application matured into U.S. Patent No. 8,003,703 with a patent term adjustment of zero (0) days. The Office determined a patent term adjustment of 0 days based upon 0 days of "A" delay, 0 days of "B" delay, and 0 days of Applicant delay.

Petitioner argues that even though he filed an RCE on January 27, 2009, he should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on April 8, 2011 until the issue date of the patent. In other words, Petitioner argue that no continued examination took place during this time period, and the Office should be accorded 138 additional days of delay pursuant to 37 CFR 1.703(b). Petitioner's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(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);

(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.

The implementing regulation, 37 CFR 1.702(b) provides that:

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:

(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.

OPINION

Petitioner's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 371(f) on February 17, 2006, and a request for continued examination under 132(b) having been filed on January 27, 2009. In other words, the 138 day

period beginning on the date of mailing of the notice of allowance on April 8, 2011 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay".

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered 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. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment 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 number of days 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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Petitioner does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Petitioner's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "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," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (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), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date,

and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "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." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "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" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR

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[2] Clause (iii) provides for not including (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. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the

amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 27, 2009, and the patent issued by virtue of that request on August 23, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 27, 2009 and ending on August 23, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 0 days indicated on the patent is correct.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

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Princeton NJ 08543-5312

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JUL 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Alexandros Tourapis, et al.	:	
Application No. 10/569,168	:	DECISION GRANTING PETITION
Filed: February 22, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. PU030257	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, July 7, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 20, 2011 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 Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2611 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment and information disclosure statement.

/Terri Johnson/
Terri Johnson
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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ATLANTA GA 30359

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In re Application of	:	
ZAVADLSEV, et al	:	
Application No. 10/569,362	:	DECISION ON PETITION
Filed: February 26, 2007	:	
Attorney Docket No. SCAN060US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publications fees on or before January 5, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed October 5, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on January 6, 2011.

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 $755 and publication fee of $300; (2) the petition fee of $810; and (3) a proper 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 the Office of Data Management for processing into a patent.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	10569366
Filing Date	24-Feb-2006
First Named Inventor	Naoki Sugiura
Art Unit	1782
Examiner Name	MICHAEL MIGGINS
Attorney Docket Number	286661US3PCT
Title	HIGH-PERFORMANCE PRESSURE VESSEL AND CARBON FIBER FOR PRESSURE VESSEL

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

- ☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).
- ☐ Applicant(s) status remains as SMALL ENTITY.
- ☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

○ One or more claims are unpatentable

◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)

○ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).

RCE request,submission, and fee.

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on

☒ Are attached.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Harris A. Pitlick/
Name	Harris A. Pitlick
Registration Number	38779

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date : April 29,2011

In re Application of :

Naoki Sugiura

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10569366

Filed : 24-Feb-2006

Attorney Docket No : 286661US3PCT

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed April 29,2011 , 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 in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 1782 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

Mail Date: 10/07/2010

Applicant	: Akio Sumizawa	: DECISION ON REQUEST FOR
Patent Number	: 7636634	: RECALCULATION of PATENT
Issue Date	: 12/22/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/569,377	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/24/2006	: 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.

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

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FEB 04 2011

OFFICE OF PETITIONS

In re Application of Vlora Rexhepi et al. :
Application No. 10/569,458 :
Filing Date: April 28, 2006 :
Attorney Docket No. 088245-1049 :

On Application For
Patent Term Adjustment

This is in response to the request under 37 C.F.R. § 1.705(b) filed September 8, 2010. Applicants submit the correct patent term adjustment to be indicated on the patent is one thousand one hundred two (1,102) days, not five hundred twenty-one (521) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,490	05/16/2008	Yoichi Kowatari	080306.57395US	3451

23911 7590 01/30/2012
CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

EXAMINER
LESLIE, MICHAEL S

ART UNIT	PAPER NUMBER
3745	

NOTIFICATION DATE	DELIVERY MODE
01/30/2012	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):

edocket@crowell.com
tche@crowell.com
maellyn1@aol.com

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WASHINGTON DC 20044-4300

In re Application of: KOWATARI, YOICHI et al Serial No.: 10/569,490 Filed: May 16, 2008 Docket: 080306.57395US Title: ENGINE LAG DOWN SUPPRESSING DEVICE OF CONSTRUCTION MACHINERY	Decision on Petition to Re-Start Time Period for Response

This is a decision on the petition filed January 5, 2012 requesting remailing the Office action mailed on August 18, 2011 and restart the period to respond due to non-receipt of the Office action. This petition is being considered pursuant to 37 CFR § 1.181. No fee is required.

The petition is Granted.

On January 5, 2012, the current petition was filed. In support of the request, petitioner stated that the Office action of August 18, 2011 was never received at the correspondence address of record. The address on the Office action of August 18, 2011 was correct as indicated in PALM. The petition also included a copy of the printout of the case summary for its docketing department showing the non-receipt of the Office action mailed on August 18, 2011 in accordance with MPEP § 710.06.

As the petitioner has provided convincing evidence that the Office action was not received. The outstanding Office action will be mailed and the period to respond will be restarted. A new non-final Office action will be re-mailed in due course.

Petition Granted.

Angela D. Sykes, Director
Technology Center 3700

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

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DEC 15 2011

OFFICE OF PETITIONS

In re Application of :
Michael Berger et al. :
Application No. 10/569,493 : DECISION ON PETITION
Filed: February 27, 2006 :
Attorney Docket No. **2177.1029** :

This is a decision on the petition, filed September 29, 2011, 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 final Office action mailed December 8, 2010, which set a three (3) month shortened statutory period for reply. A Notice of abandonment was mailed July 29, 2011.

Petitioner asserts that the Office action dated December 8, 2010, was not received.

A review of the written record indicates no irregularity in the mailing of the final Office action, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

(1) a statement from 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.

(2) 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.

(3) 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. See MPEP §711.03(c)(I)(A).

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.

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

This application is being referred to the Technology Center Art Unit 2617 for **re-mailing** the final Office action of December 8, 2010, with the period for reply running from the mailing date thereof.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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NEW BERN NC 28562

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SEP 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Damrath et al.	:	
Application No. 10/569532	:	DECISION ON
Filing or 371(c) Date: 02/24/2006	:	PETITION
Title of Invention:	:	
DEVICE FOR IRONING	:	
A PIECE OF GARMENT	:	

This is a decision in response to the Petition to Revive Unintentionally Abandoned Application Under 37 CFR 1.137(b), filed April 12, 2011. The petition is properly treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 (no fee).

The petition is **dismissed as moot.**

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed March 11, 2008. The Office action set a three (3) month period for reply. Extensions of time under 37 CFR 1.136(a) were available.

Office records

A review of Office records and the application file reveal that Applicant timely filed an Amendment in reply to the Office action on June 6, 2008.

Analysis/conclusion

In view of the timely reply to the Office action filed June 6, 2008, the application is not abandoned, and no petition to revive, or to withdraw the holding of abandonment the application is required.

The petition fee has been refunded to Applicant's deposit account.

The application file is being referred to Technology Center Art Unit 3765 for the appropriate action on the Amendment filed June 6, 2008 by the Examiner in the normal course of business.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 8,073,977	:	
Issued: December 6, 2011	:	
Application No. 10/569,569	:	NOTICE
Filed: February 27, 2006	:	
Attorney Docket No. 0321.68322	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 31, 2011.

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 the undersigned at (571) 272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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Paper No.

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON DC 20036

MAILED
JUL 22 2011
OFFICE OF PETITIONS

In re Patent No. 7,884,106 :
Shibuya et al. :
Application No. 10/569,642 : LETTER REGARDING
Issue Date: February 8, 2011 : PATENT TERM ADJUSTMENT
Filed: February 27, 2006 :
Atty Docket No. 031088A :

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)," filed March 31, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from eighteen (18) days to seventy-seven (77) 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 seventy-seven (77) days is **DISMISSED.**

BACKGROUND

On February 8, 2011, the above-identified application matured into US Patent No. 7,884,106 with a patent term adjustment of 18 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

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

The record supports a conclusion that this patent is subject to a terminal disclaimer.

At issuance, Patentee was accorded 309 (551 over three years - 183 that are excluded due to appellate review - 59 overlap) days for B-delay. Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 368 (551 - 183). In other words, Patentee argues that the 59 days of overlap should not be deducted from the B-delay, as they fall on the same calendar days as the excluded period.

OPINION

A notice of appeal was filed on July 30, 2009, and a non-final Office action was mailed on January 28, 2010. The 183 days of the over three year period consumed by appellate review, beginning on July 30, 2009 and ending on January 28, 2010, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

The aforementioned non-final Office action was mailed on January 28, 2010, which is four months and 59 days after the filing of the aforementioned notice of appeal on July 30, 2009. This constitutes 59 days of examination delay, pursuant to 37 C.F.R. § 1.703(a)(2).

Patentee argues that the Office should not deduct the 59-day period of overlap, as the entire period of overlap occurs on the same calendar days as the excluded period.[1]

Patentee's argument has been considered, but not found persuasive. The Office holds that the 183-day period from July 30, 2009 to January 28, 2010 is excluded from the period of B-delay, and the 59-day period of A-delay from November 30, 2009 to January 28, 2010 overlaps with the period of B-delay. The Office further holds that it is proper to reduce the period of B delay by both the entire excluded period and the entire period of overlap, despite the fact that 59 days of the 183-day excluded period fall on the same calendar days as the overlapping period.

Conclusion

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

---

[1] Petition, pages 3-4.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[2]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

[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.

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 06-123	
Application Number: 10/569,665	Filing Date (or 371(b) or (f) Date): February 24, 2006
Patent Number: 7,666,184	Issue Date: February 23, 2010
First Named Inventor: Roman Stauch	
Title: PLANETARY ROLL SYSTEM, IN PARTICULAR FOR A DEVICE FOR EXTENDING BONES	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /Gregory P. LaPointe #28395/	Date August 19, 2010
Name (Print/Typed) Gregory P. LaPointe	Registration Number 28,395

***Note**: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☐ *Total of _____ forms are submitted.

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 10 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.

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.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

> Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

1. **For patents issued before March 2, 2010:** A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.

2. **For patents issued on or after March 2, 2010 (do not use this form):** Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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BACHMAN & LAPOINTE, P.C.
900 CHAPEL STREET
SUITE 1201
NEW HAVEN, CT 06510

Mail Date: 09/14/2010

Applicant	: Roman Stauch	: DECISION ON REQUEST FOR
Patent Number	: 7666184	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/569,665	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/24/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **595** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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LEASON ELLIS LLP
ONE BARKER AVENUE
FIFTH FLOOR
WHITE PLAINS, NY 10601-1526

MAILED
MAR 07 2012
OFFICE OF PETITIONS

In re Application of	:	
Charles D. Leahy, et al.	:	
Application No.: 10/569,743	:	ON PETITION
Filed: November 9, 2006	:	
Attorney Docket No.: 0059/0449-US1	:	

This is a decision on the petition, filed March 6, 2012, 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, 2012, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The application is being referred to Technology Center AU 3761 for further processing of the request for continued examination under 37 CFR 1.114.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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CANTOR COLBURN, LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD CT 06103

MAILED

AUG 04 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Roberto Jun Ikesaki :
Application No. 10/569,777 :
Filed: December 22, 2006 :
Attorney Docket No. TIN0038US :

This is a decision on the petition, filed July 23, 2010, 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 issued patent.

The request is **DISMISSED**.

37 CFR 3.81(a) permits the patent to issue to the assignee, provided that, at the time the issue fee is paid, the name and correct address of an assignee is provided. 37 CFR 3.81(b) permits the patent to issue in the name and correct address of an assignee if the assignment was submitted after payment of the issue fee but ***prior to issuance of a patent***. Patent and Trademark Office assignment records disclose that the most current assignment recorded November 14, 2006, Reel 018594 and Frame 0494 states the assignee's name as "DAIHATSU INDUSTRIA E COMERCIO DE MOVEIS E APARELHOS ELETRICOS LTDA" and the address as "Sao Paulo, Spain." Petitioner has submitted the name of "DAIHATSU INDUSTRIA E COMERCIO DE MOVEIS E APARELHOS ELETRICOS LTDA, AV. DAS NACOES UNIDAS, 21314 – SAO PAULO, BRAZIL 04795-000 ".

Accordingly, since petitioner is requesting a correction of the name and address of an assignee that has not yet been submitted for recordation to the Assignment Branch, issuance of a certificate of correction would not be proper. *See* MPEP Section 307.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

[1] *See* Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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BAKER BOTTS L.L.P.
30 ROCKEFELLER PLAZA
44TH FLOOR
NEW YORK, NY 10112-4498

MAILED
JUN 27 2011
OFFICE OF PETITIONS

Applicant: Bell, et al.
Appl. No.: 10/569,876
International Filing Date: August 27, 2004
Title: SYSTEM FOR DELIVERY OF FIBERS INTO CONCRETE
Attorney Docket No.: 077470.0362
Pub. No.: US 2007/0190300 A1
Pub. Date: August 16, 2007

This is a decision on the "Petition under 37 CFR 1.182," [1] which makes a request for a corrected patent application publication [2] received on June 30, 2010, for the above-identified application.

The petition is dismissed as moot.

Since the application has been issued as a patent, the request is deemed moot.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. § 41 (a)(7). The required $400 fee for the petition under 37 CFR 1.182 petition has not been paid.

[2] 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."

UNITED STATES PATENT AND TRADEMARK OFFICE

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

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SEP 21 2010

OFFICE OF PETITIONS

In re Application of :
Niranen :
Application No. 10/569,924 :
Filed: 27 February, 2006 :
Attorney Docket No. 513-6 PCT/US :

DECISION

This is a decision on the petition filed on 27 July, 2010, properly considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition under 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

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

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment mailed on 29 December, 2009, with reply due under absent an extension of time on or before 29 January, 2010.

The application went abandoned by operation of law after midnight 29 January, 2010.

The Office mailed a Notice of Abandonment on 14 July, 2010.

On 27 July, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181, with a reply, and averred, *inter alia*, non-receipt, but with no express statement of nonreceipt "at the correspondence address of record"; and of search and non-discovery, a description of the docketing system, but no express statement of sufficient reliability; copies of the due date docket/calendar and the docket sheet for the instant application (however, with unnecessary copies of mail and fax records—*see*: the guidance in the Commentary at MPEP §711.03(c)(I)).

Petitioner is directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> 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.[1] (Emphasis supplied.)

***

On any renewed petition, Petitioner must: make the statements as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I).

Should Petitioner find it not possible to satisfy these requirements, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

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

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

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

STATUTES, REGULATIONS

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

---

[1] *See*: MPEP §711.03(c) (I)(A).

[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).

Allegations as to the Request to
Withdraw the Holding of Abandonment

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

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[3]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[3] 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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6900 JERICHO TURNPIKE
SYOSSET NY 11791

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OFFICE OF PETITIONS

In re Application of :
Niranen :
Application No. 10/569,924 : DECISION
Filed: 27 February, 2006 :
Attorney Docket No. 513-6 PCT/US :

This is a decision on the petition filed on 30 September, 2010, properly considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

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

As to the Request to Withdraw
the Holding of Abandonment

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

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment mailed on 29 December, 2009, with reply due under absent an extension of time on or before 29 January, 2010.

The application went abandoned by operation of law after midnight 29 January, 2010.

The Office mailed a Notice of Abandonment on 14 July, 2010.

On 27 July, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181, with a reply, and averred, *inter alia*, non-receipt, but with no express statement of nonreceipt "at the correspondence address of record"; and of search and non-discovery, a description of the docketing system, but no express statement of sufficient reliability; copies of the due date

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docket/calendar and the docket sheet for the instant application (however, with unnecessary copies of mail and fax records. The petition was dismissed on 21 September, 2010.

On 30 September, 2010, Petitioner re-advanced the petition pursuant to 37 C.F.R. §1.181—a reply previously filed—and averred, *inter alia*, non-receipt at the correspondence address of record, and of search and non-discovery; a description of the docketing system, express statement of sufficient reliability; and pointing back to previously submitted copies of the due date docket/calendar and the docket sheet for the instant application—and, so, appearing to comply with the guidance in the Commentary at MPEP §711.03(c)(I)).

Petitioners always are directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> 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.[1] (Emphasis supplied.)

***

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act

[1] *See*: MPEP §711.03(c) (I)(A).

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complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

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

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

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

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies

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

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

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

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> and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

Allegations as to the Request to Withdraw the Holding of Abandonment:

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

Petitioner appears to have made the showing required.

CONCLUSION

Accordingly, the petition as considered under 37 C.F.R. §1.181 is **granted**, and the 14 July, 2010, Notice of Abandonment hereby is **vacated**.

The instant application is released to Technology Center/AU 1791 for further processing in due course (e.g. the reply submitted on 27 July, 2010).

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

[5] 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).

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

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

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

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NOV 09 2010
OFFICE OF PETITIONS

CLIFFORD B. PERRY
270 N. EL CAMINO REAL
NO. F-347
ENCINITAS CA 92024

In re Application of	:	
Roland KALB	:	
Application No. 10/569,934	:	DECISION ON PETITION
Filed: October 10, 2006	:	
Attorney Docket No. P 1065 US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 7, 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, September 30, 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 December 31, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

A review of the Office record shows the statement of unintentional delay is signed by the inventor, who is determined to be the sole inventor by the declaration filed June 2, 2006. According to the correspondence dated June 2, 2006, all other inventors were deleted. If this is not a correct reading, petitioner must notify the Office immediately. If the reading is correct, a corrected filing receipt and/or a request for corrected inventorship, as appropriate, should be requested to clearly show the correct inventor(s) in the above-identified application.

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

This application is being referred to Technology Center AU 1796 for appropriate action by the Examiner in the normal course of business on the reply received October 7, 2010.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

Cc: ROLAND KALB
GOESSERSTRASSE 44/5
A-8700 LEOBEN AUSTRIA

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LEASON ELLIS LLP
81 MAIN STREET
SUITE 503
WHITE PLAINS, NY 10601

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JUN 01 2011

OFFICE OF PETITIONS

In re Application of :
Masahiro Hosoi :
Application No. 10/569,992 : ON PETITION
Filed: June 20, 2006 :
Attorney Docket No. 6920/1098-US0

This is a decision on the petition, filed May 31, 2011 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, 2011 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 3725 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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Francis C Hand
Carella Byrne Bain Gilfillan Cecchi Stewart
and Olstein
5 Becker Farm Road
Roseland, NJ 07068

MAILED

FEB 09 2012

OFFICE OF PETITIONS

In re Application of Akselsen et al. :
Application No. 10/569,996 :
371(c) Date: January 3, 2007 :
Attorney Docket No. 53550.79 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b) filed January 5, 2012, which requests revival of the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to file a proper reply to the final Office action mailed February 14, 2011, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on Tuesday, May 17, 2011. A Notice of Abandonment was mailed on September 6, 2011.

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, and
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.[1]

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied (1) a reply in the form of request for continued examination and an amendment, (2) the required petition fee of $930, and (3) the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

[1] A terminal disclaimer is also necessary if the application is a design application or if the application was filed on or before June 8, 1995.

Technology Center Art Unit 3634 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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JHK Law
P O Box 1078
La Canada CA 91012-1078

MAILED
DEC 16 2010
PCT LEGAL ADMINISTRATION

In re Application of	:
BAMBAD, Cynthia C., et al.	:
Application No. 10/570,010	: DECISION ON PETITION
Int'l Filing Date: 26 August 2004	: UNDER 37 CFR 1.78
Attorney Docket No. 13150-70089US	:

This is a decision on the "Petition under 37 CFR 1.78(a)(3)", filed 15 June 2010, to accept delayed benefit claims under 35 U.S.C. § § 120 and 119(e) for the benefit of priority to nonprovisional and provisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED** as follows:

35 U.S.C. 120 states, in pertinent part:

> An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

The present application was filed 26 August 2004. See 35 U.S.C. 363. The instant petition seeks to add a benefit claim under 35 U.S.C. 120 to U.S. application 12/695,070 filed 27 January 2010. As such, the petition cannot be granted, as U.S. application 12/695,070 is not an earlier filed application, as required under the statute.

Any inquiries concerning this decision may be directed to Erin Thomson at (571) 272-3292. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

/Boris Milef/

Boris Milef
PCT Petitions Examiner
Office of PCT Legal Administration

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SEP 08 2011

PCT LEGAL ADMINISTRATION

JHK Law
P O Box 1078
La Canada CA 91012-1078

In re Application of	:	
BAMBAD, Cynthia C., et al.	:	
Application No. 10/570,010	:	DECISION ON PETITION
Int'l Filing Date: 26 August 2004	:	UNDER 37 CFR 1.78(a)(3) and (a)(6)
Attorney Docket No. 13150-70089US	:	

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed 05 July 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

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

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

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

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

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

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been

submitted; and (3) the petition's statement of unintentional delay is construed to mean 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. If this is not a correct understanding, applicants must notify the Office immediately. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

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

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

Any questions concerning this matter may be directed to Erin Thomson at (571) 272-3292. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1643 for appropriate action on the amendment submitted 05 July 2011, including consideration by the examiner of the claim for benefit of the prior-filed applications.

/Boris Milef/

Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration

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HEENAN BLAIKIE LLP
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TORONTO ON M5H 2T4 CA CANADA

MAILED
MAY 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Martin David Bloomberg et al.	:	
Application No. 10/570,048	:	DECISION ON PETITION
Filed: December 12, 2006	:	
Attorney Docket No. 056647-0009	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 2, 2011, 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 June 28, 2010, which set a shortened statutory period for reply of one (1) month or (30) thirty days. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 29, 2010. A Notice of Abandonment was mailed on March 7, 2011.

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 1773 for appropriate action by the Examiner in the normal course of business on the reply received March 2, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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DENKO COBURN & LAUFF LLP
816 CONGRESS SUITE 1205
AUSTIN TX 78701

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Renaud, et al.	:	
Application No. 10/570,080	:	DECISION
Filed/Deposited: 28 February, 2006	:	
Attorney Docket No. 21249-018001	:	
LDR/11/US	:	

This is a decision on the petition filed on 14 March, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 6 August, 2010, with reply due absent extension of time on or before 6 November, 2010.

The application went abandoned by operation of law after midnight 6 February, 2011.

The Office mailed the Notice of Abandonment on 2 March, 2011.

On 14 March, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, a reply in the form of an amendment, and made the statement of unintentional delay.

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

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

STATUTES, REGULATIONS 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.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and, by definition, are not intentional.[3]))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

---

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

[2] 35 U.S.C. §133 provides:

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

[3] Therefore, by example, an 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.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Technology Center/AU 3775 for further processing in due course.

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

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ONE HEALTH PLAZA 101/2
EAST HANOVER NJ 07936-1080

MAILED

AUG 25 2011

OFFICE OF PETITIONS

In re Patent No. 7,968,518	:
HIJIKATA et al.	: DECISION ON REQUEST FOR
Issue Date: June 28, 2011	: RECONSIDERATION OF
Application No. 10/570,097	: PATENT TERM ADJUSTMENT
Filed: December 7, 2006	:
Docket No. PAT033313-US-PCT	:
Title: USE OF MODIFIED	:
CYCLOSPORINS FOR THE TREATMENT	:
OF HCV DISORDERS	:

This is a decision on the petition filed on June 28, 2011, 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 two hundred thirty-seven days (1237) days, or in the alternative, at least one thousand thirty-one (1031) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

On June 28, 2011, the above-identified application matured into U.S. Patent No. 7,968,518, with a revised patent term adjustment of 914 days. On June 28, 2011, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1237 days, or in the alternative, 1031 days. Patentee maintains that 37 CFR 1.703(b) is contrary to the statutory mandate of 35 U.S.C. § 154(b)(1)(B) on at least two bases. As to the First Basis for patentee's argument,

patentee argues:

> . . . *contrary to 35 U.S.C. § 154(b)(1)(B)*, the Office improperly ceased the accrual of all "B delay" from the filing date of the RCE in the '518 Patent through to the issue date thereof. Patentee submits that the clear mandate of 35 U.S.C. § 154(b)(1)(B) is that the "time consumed by examination" is to be considered only in identifying on what date there has been a "trigger" of the right of the patentee to receive a "remedy".
>
> * * *
>
> +847 days is the "B delay" under the First Basis as being the days between the date on which the 3-Years of Non-Excluded Time Had Accrued and the Issue Date. Under 35 U.S.C. § 154(b)(1)(B), the filing of an RCE only impacts the question of the date on which there had been an accrual of three years of non-excluded time, so as to trigger the right to a "B Delay" remedy. Because the RCE in '518 Patent was filed after the accrual of three years of non-excluded time, the RCE does not move the 3-year date to a later point in time. Accordingly, the B-Delay is counted from March 3, 2009, to June 28, 2011, which is +847 days.

Petition, pp. 10-11.

As to the Second Basis, patentee argues in the alternative that "[t]he time consumed by continued examination was only from the date the RCE was filed to the date when the Second Notice of Allowance was mailed, i.e., the post-examination activity that followed the Second Notice of Allowance was *not* "Time Consumed by Examination." *Petition, p. 12.* Patentees argue that "the Office improperly ceased the accrual of "B Delay" from the filing date of the RCE, despite that certain periods of time thereafter were not consumed by continued examination." *Id.* Petitioners assert: "At least +641 days is the "B Delay" under the Second Basis as being the days between the date on which 3-Years of Non-Excluded Time Had Accrued and the Issue Date (+847 days), less the "Time Consumed by Examination," i.e. less the days between the RCE Filing Date and the Second Notice of Allowance mailing date (-206 days)." *Id.*

Patentee's arguments have been carefully considered by are not found to be persuasive. The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(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);

(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.

The implementing regulation, 37 CFR 1.702(b) provides that:

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:

(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.

The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 524 days based on the date the national stage commenced under 35 U.S.C. 371, March 3, 2006, and the patent not having issued as of the day after the three year date, March 4, 2009, and a request for continued examination under 35 U.S.C. 132(b) having been filed on August 10, 2010. The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered 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 or the national stage commenced. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. Thus, with respect to calculating the "B delay", where applicant has filed a request for continued examination the period of adjustment 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 number of days 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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and 37 CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's second argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "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," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (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), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it

takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent. Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "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." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "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" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under

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[2] Clause (iii) provides for not including (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. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under

35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the Notice of Allowance. All the time the application is pending from the date of filing of

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on August 10, 2010, and the patent issued by virtue of that request on June 28, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on August 10, 2010, and ending on June 28, 2011, is not included in calculating Office delay.

In view thereof, it is concluded that the patent term adjustment of 914 days indicated on the patent is correct.

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

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

Jeffery Furr
253 N Man Street
Johnstown OH 43031

MAILED
JAN 10 2011
OFFICE OF PETITIONS

In re Application of :
Bittencourt et al. :
Application No. 10/570,187 :
Filed: February 28, 2006 :
Attorney Docket No. 100-1005 :
For: DEVICE WITH HEATING AND TEMPERATURE MONITORING SYSTEM OF FLUID IN SINGLE AND MULTIPLE CONTAINER SETS FOR PARENTHERAL SOLUTIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to properly respond to the final Office action, mailed January 25, 2008, which set an extendable three month period for reply. Applicants submitted an amendment after final on April 25, 2008 that failed to place the application in *prima facie* condition for allowance, as was explained in the Advisory Action, mailed May 22, 2008. It is noted that the May 22, 2008 Advisory Action was returned to the Office. This application became abandoned on April 26, 2008. A Notice of Abandonment was mailed on October 8, 2008 and was later returned to the Office on October 14, 2008.

Applicants have submitted a RCE, the required $405.00 fee, and a submission in reply to the January 25, 2008 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the January 25, 2008 final Office action, and the $810.00 petition fee.

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.

After the mailing of this decision the application will be forwarded to Technology Center AU 3742 for consideration of the RCE filed on October 7, 2010.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: JEFFREY M. FURR
2622 DEBOLT ROAD
UTICA, OH 43080

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 03-02-12
TO SPE OF : ART UNIT 1643

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/570220 Patent No.: 7589181

CofC mailroom date: 08-16-11

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

Note: _____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

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

Comments: _____

SPE Minode G **Art Unit** 1643

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

MAR 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Toshihiko Zenpo et al	:	
Application No. 10/570,273	:	DECISION ON PETITION
Filed: March 2, 2006	:	
Attorney Docket No. 04632.0068	:	

This is a decision on the petition, filed November 9, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notice of Non-Compliant Amendment (Notice) mailed March 18, 2009, which set a one (1) month or 30 day period for reply. A Notice of Abandonment was mailed on December 21, 2009.

Petitioner asserts that the Notice dated March 18, 2009 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.

The showing required to establish non-receipt of an Office communication must include:

(1) 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.

(2) 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.

(3) 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. See MPEP §711.03(c)(I)(A).

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of the above-stated requirements. Items (1) and (2) above have not been provided.

Accordingly, absent the required evidence to establish non-receipt of the Notice of March 18, 2009, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

The petition fee of $540 provided with the petition has been refunded as a petition under 37 CFR 1.181 requires no fee.

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

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

By hand: U. S. Patent and Trademark Office

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

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

Telephone inquiries concerning this decision should be directed to the undersinged at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED
APR 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Toshihiko Zenpo et al.	:	
Application No. 10/570,273	:	DECISION ON PETITION
Filed: March 2, 2006	:	
Attorney Docket No. 04632.0068	:	

This is a decision on the Response to Decision On Petition filed April 5, 2011, which is being treated as a renewed 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 Notice of Non-Compliant Amendment (Notice) mailed March 18, 2009, which set a one (1) month or 30 day period for reply.

Petitioner asserts that the Notice, dated March18, 2009, was not received.

The petition under 37 CFR 1.181 filed November 9, 2009 was dismissed in a decision mailed March 1, 2011.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and

3. a copy of the docket record where the non-received Notice 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 Technology Center Art Unit 1793 for re-mailing of the Notice. The period for reply will run from the mailing date of the Notice.

Carl Friedman
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11-18-10

Paper No.: _____

TO SPE OF : ART UNIT 2886

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/570,323 Patent No.: 7265852

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

FOR IFW FILES: Check Claims

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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.

SPE [signature] ART UNIT 2886

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. 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. : 7265832

APPLICATION NO.: 10/570323

ISSUE DATE : September 4, 2007

INVENTOR(S) : MONTGOMERY, Derek; JAMES, Daryl; YAN, David Yue

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:

Claims 1-16 are replaced with claims 1-29 as follows:

1. An apparatus for measuring the velocity of particles carried by a fluid, flowing through a pipe, comprising:

(a) at least one light source coupled to two optical fibers for generating two separate beams of light;

(b) a first means in the pipe wall for containing the fluid flow within the pipe and allowing the beams of light to enter the inside pipe volume;

(c) a telecentric optical delivery system having a single aperture and a single optical axis, which directs said two beams of light through said first means in the pipe wall, so that the beams form two focal spots inside the pipe, aligned at the same position within the pipe cross-section but at different points along the pipe axis with a known separation between them;

(d) a second means in the pipe wall, disposed on the opposite side of the pipe wall to the first means in the pipe wall, for containing the fluid flow within the pipe and allowing light to exit the inside pipe volume;

(e) at least one measuring light detector means for detecting light scattered by the particles carried by the fluid, and converting the time varying detected light amplitude to a corresponding measuring electronic signal;

(f) an optical collection system, having an optical axis that is substantially collinear with the optical axis of said optical delivery system, that collects light scattered by particles carried in the fluid flow within a first solid angle subtended from said focal spots, and focuses said scattered light on to said measuring light detector means;

(g) an opaque obscuration to absorb unscattered light, disposed on the optical axis after said focal spots, said obscuration subtending a second solid angle from said focal spots, which is smaller than said first solid angle so that said scattered light that passes through the unobscured portion of said first solid angle, reaches the measuring light detector means; and

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Oyen Wiggs Green & Mutala LLP, 480 - 601 West Cordova Street, Vancouver, BC, Canada V6B 1G1

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

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

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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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7265832

APPLICATION NO.: 10/570323

ISSUE DATE : September 4, 2007

INVENTOR(S) : MONTGOMERY, Derek; JAMES, Daryl; YAN, David Yue

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:

(h) an electronic processing means that receives said measuring electronic signals detected by the light detector means, wherein said measuring electronic signals are processed to determine the time of flight delay of particles passing through the two focal spots, and further means for calculating the particle velocity or fluid flow rate.

2. A device according to claim 1, wherein the telecentric optical delivery system comprises a focussing lens having a focal length and wherein the two optical fibers have two facets at the ends thereof, the two facets being tilted equally away from the optical axis of the delivery system for refracting said beams of light toward the optical axis of the delivery system to intersect the optical axis in front of the focussing lens at a distance equal to the focal length of the focussing lens.

3. A device according to claim 1, wherein the light source is comprised of one or more lasers.

4. A device according to claim 1, wherein the light detector means is comprised of an optical fiber coupled to a photo-detector.

5. A device according to claim 1, wherein the light detector means includes a first and second light detector field, aligned so that light scattered from a first of said two focal spots is coupled to the first light detector field, and light scattered from a second of said two focal spots is coupled to the second light detector field.

6. A device according to claim 5, wherein the light detector means comprises a first collection optical fiber coupled to a first light detector means and a second collection optical fiber coupled to a second light detector means.

7. A device according to claim 1, wherein the optical axes of said optical delivery system and said optical collection system are substantially perpendicular to the flow direction.

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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)).
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CERTIFICATE OF CORRECTION

PATENT NO. : 7265832

APPLICATION NO.: 10/570323

ISSUE DATE : September 4, 2007

INVENTOR(S) : MONTGOMERY, Derek; JAMES, Daryl; YAN, David Yue

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:

8. A device according to claim 1, wherein a chief ray of each of said two beams of light is substantially perpendicular to the axis of said pipe, so that the chief rays do not deviate if the refractive index of the fluid changes.

9. A device according to claim 1, wherein a mechanical housing with a central hole substantially matched in size and shape to the cross-section of the pipe, is inserted into the pipeline and mated to fore and aft pipe sections so as to form a continuous and sealed passage for fluid to flow through, said mechanical housing incorporating said first and second means in the pipe wall, said optical delivery system and said optical collection system.

10. A device according to claim 1, wherein the first and second means in the pipe wall comprise first and second transparent optical windows having substantially cylindrical inner surfaces, substantially matched to the surface of the inner pipe wall.

11. A device according to claim 1, wherein the first and second means in the pipe wall comprise a length of transparent tubing, with an inner diameter matched to the inner diameter of the pipe to contain the fluid inside the pipe and allow light to pass in from the optical delivery system and through to the optical collection system.

12. A device according to claim 1, wherein the optical delivery system includes cylindrical optical lens means to expand the width of the focal spots in the plane of the pipe cross-section.

13. A device according to claim 12, wherein the cylindrical lens means generates secondary foci at a plane of said opaque obscuration, such that the beams form a pair of collinear focal line segments parallel to the pipe axis and passing through the center of the optical system axis.

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7265832

APPLICATION NO.: 10/570323

ISSUE DATE : September 4, 2007

INVENTOR(S) : MONTGOMERY, Derek; JAMES, Daryl; YAN, David Yue

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:

14. A device according to claim 1, wherein means are provided to intercept a portion of the unscattered light, in front of the opaque obstruction but behind the second optical window, and coupling the intercepted light on to at least one reference detector means, and using the detected signal level from the intercepted light to adjust the gain of the measuring light detector means to compensate for variations in the incident light intensity.

15. A device according to claim 1,wherein a second optical collection system is provided, with a second collection axis, in the same plane as the delivery optical axis and the first collection axis, and intersecting the focal spots, wherein light scattered by particles in the fluid stream are coupled into a second light detector means to produce second detected light signals, for the purpose of analyzing the at least one of the size and shape of particles travelling in the fluid stream by comparing the ratio of the amplitudes of the first detected light signals with the second detected light signals.

16. A device according to claim 15, wherein said axis of said second optical collection system is substantially collinear with said first optical collection axis, and wherein said second optical collection system has a larger optical aperture than said first optical collection system, that allows scattered light to be collected at higher scattered angles.

17. A device according to claim 1, wherein the telecentric optical delivery system includes cylindrical optical lens means for expanding the width of the focal spots in the plane of the pipe cross-section and for generating secondary foci at a plane of said opaque obscuration, such that the beams form a pair of collinear focal line segments parallel to the pipe axis and passing through the center of the optical system axis.

18. A device according to claim 17, wherein the light source is comprised of one or more lasers.

19. A device according to claim 17, wherein the light detector means is comprised of an optical fiber coupled to a photo-detector.

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CERTIFICATE OF CORRECTION

PATENT NO. : 7265832

APPLICATION NO.: 10/570323

ISSUE DATE : September 4, 2007

INVENTOR(S) : MONTGOMERY, Derek; JAMES, Daryl; YAN, David Yue

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:

20. A device according to claim 17, wherein the light detector means includes a first and second light detector field, aligned so that light scattered from a first of said two focal spots is coupled to the first light detector field, and light scattered from a second of said two focal spots is coupled to the second light detector field.

21. A device according to claim 20, wherein the light detector means comprises a first collection optical fiber coupled to a first light detector means and a second collection optical fiber coupled to a second light detector means .

22. A device according to claim 17, wherein the optical axes of said optical delivery system and said optical collection system are substantially perpendicular to the flow direction.

23. A device according to claim 17, wherein a chief ray of each of said two beams of light is substantially perpendicular to the axis of said pipe, so that the chief rays do not deviate if the refractive index of the fluid changes.

24. A device according to claim 17, wherein a mechanical housing with a central hole substantially matched in size and shape to the cross-section of the pipe, is inserted into the pipeline and mated to fore and aft pipe sections so as to form a continuous and sealed passage for fluid to flow through, said mechanical housing incorporating said first and second means in the pipe wall, said optical delivery system and said optical collection system.

25. A device according to claim 17, wherein the first and second means in the pipe wall comprise first and second transparent optical windows having substantially cylindrical inner surfaces, substantially matched to the surface of the inner pipe wall.

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PATENT NO. : 7265832

APPLICATION NO.: 10/570323

ISSUE DATE : September 4, 2007

INVENTOR(S) : MONTGOMERY, Derek; JAMES, Daryl; YAN, David Yue

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:

26. A device according to claim 17, wherein the first and second means in the pipe wall comprise a length of transparent tubing, with an inner diameter matched to the inner diameter of the pipe to contain the fluid inside the pipe and allow light to pass in from the optical delivery system and through to the optical collection system.

27. A device according to claim 17, wherein means are provided to intercept a portion of the unscattered light, in front of the opaque obstruction but behind the second optical window, and coupling the intercepted light on to at least one reference detector means, and using the detected signal level from the intercepted light to adjust the gain of the measuring light detector means to compensate for variations in the incident light intensity.

28. A device according to claim 17,wherein a second optical collection system is provided, with a second collection axis, in the same plane as the delivery optical axis and the first collection axis, and intersecting the focal spots, wherein light scattered by particles in the fluid stream are coupled into a second light detector means to produce second detected light signals, for the purpose of analyzing the at least one of the size and shape of particles travelling in the fluid stream by comparing the ratio of the amplitudes of the first detected light signals with the second detected light signals.

29. A device according to claim 28, wherein said axis of said second optical collection system is substantially collinear with said first optical collection axis, and wherein said second optical collection system has a larger optical aperture than said first optical collection system, that allows scattered light to be collected at higher scattered angles.

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

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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.

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)
Approved for use through 02/28/2011. OMB 0651-0020
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 450100-05265	
Application Number: 10/570,369	Filing Date (or 371(b) or (f) Date): March 2, 2006
Patent Number: 7,657,155	Issue Date: February 2, 2010
First Named Inventor: Makoto Korehisa	
Title: PROGRAM DATA RECORDING, METHOD AND APPARATUS	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature William Frommer	Date August 2, 2010
Name (Print/Typed) William S. Frommer	Registration Number 25,506

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☑ *Total of 1 forms are submitted.

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 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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William S. Frommer
Frommer Lawrence & Haug
745 Fifth Avenue
New York, NY 10151

Mail Date: 08/12/2010

Applicant	: Makoto Korehisa	: DECISION ON REQUEST FOR
Patent Number	: 7657155	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/570,369	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/02/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1007** 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
P.O. Box 1450
Alexandria, VA 22313-1450
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BORSON LAW GROUP, PC
1078 CAROL LANE, #200
LAFAYETTE CA 94549

MAILED

AUG 12 2011

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Margaret Brimble et al. :
Application No. 10/570,395 :
Filed: March 2, 2007 :
Attorney Docket No: **NRNZ-01050US1** :

This is a decision on the "PETITION UNDER 37 C.F.R. 1.181 TO REVIVE APPLICATION ABANDONED DUE TO FAILURE OF THE OFFICE TO PROVIDE ADVISORY ACTION" filed August 2, 2011.

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

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

A Final Office Action was mailed December 21, 2010 which set a three month period for response. A response was filed February 10, 2011 however, a Notice of Abandonment was mailed July 27, 2011 because the response filed did not place the application in condition for allowance.

Petitioner argues that an Advisory Action was not prepared after the filing of the response and thus, the application should not have been held abandoned.

Petitioner's argument has been considered but is not persuasive.

The application is abandoned because while a response to the Final Office Action was filed February 10, 2011, it was not a proper reply. The failure to receive Receipt the Advisory Action does not relieve the petitioner from filing a proper reply within the statutory period.

In view of the above, and since the arguments presented do not substantiate a finding that a proper response was filed to the December 21, 2010 Final Office Action, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) 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 application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

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

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

(4) any terminal disclaimer (and fee as set forth in 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).

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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BORSON LAW GROUP, PC
1078 CAROL LANE, #200
LAFAYETTE CA 94549

MAILED

AUG 29 2011

OFFICE OF PETITIONS

In re Application of :
Margaret Brimble et al. :
Application No. 10/570,395 : ON PETITION
Filed: March 2, 2007 :
Attorney Docket No: **NRNZ-01050US1** :

This is a decision on the petition under 37 CFR 1.137(b)[1], filed August 19, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to file a timely response to the Final Office Action mailed December 21, 2010, which set a three month period for reply. Accordingly, a Notice of Abandonment was mailed July 27, 2011.

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

This matter is being referred to Technology Center 1624 for processing of the RCE.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

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

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

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Ross Oehler
Cephalon Inc.
41 Moores Road
PO Box 4011
Frazer, PA 19355

In re Patent No. 7,566,805	:
Hickey et al.	: DECISION UPON REMAND AND
Issue Date: July 28, 2009	: RECONSIDERATION OF
Application No. 10/570,405	: PATENT TERM ADJUSTMENT
Filed: March 3, 2006	: AND NOTICE OF INTENT
Attorney Docket No. CP404	: TO ISSUE CERTIFICATE OF
Title: Modafinil Compositions	: CORRECTION
	:

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).

A telephonic call between USPTO's solicitor office and counsel for plaintiff reached agreement as to the amount of PTA, 146 days.

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 one hundred and forty-six (146) 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 one hundred and forty-six (146) 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 : 7,566,805 B2

DATED : **July 28, 2009** **DRAFT**

INVENTOR(S) : Hickey 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 107 days

Delete the phrase "by 107 days" and insert – by 146 days--

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 10570405 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10570405

Application Filing Date	03/03/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	07/28/2009	Non-Overlapping USPTO Delays:	257
A Delays	257	PTO Manual Adjustment	39
B Delays	0	Applicant Delay (APPL)	150
C Delays	0	Total PTA (days)	146

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
73	09/15/2011		P028	Adjustment of PTA Calculation by PTO	39	0	
67	07/28/2009	04/16/2009	PTAC	Patent Issue Date Used in PTA Calculation	103	53	
67.5	07/08/2009	03/04/2009	PTA36M	PTA 36 Months	0	0	
66	06/22/2009		EFDC	Export to Final Data Capture		0	
65	06/19/2009		FIDC	Finished Initial Data Capture		0	
64	06/19/2009		D1935	Dispatch to FDC		0	
62	01/28/2009		QURF	Workflow - Query Request - Finish		0	
63	01/27/2009		TCPB	Printer Rush- No mailing		0	
61	01/26/2009		TCPB	Printer Rush- No mailing		0	
59	01/14/2009		QURI	Workflow - Query Request - Begin		0	
60	01/12/2009		PUBTC	Pubs Case Remand to TC		0	
58	01/06/2009		QURF	Workflow - Query Request - Finish		0	
57	01/02/2009		TCPB	Printer Rush- No mailing		0	
55	12/29/2008		QURI	Workflow - Query Request - Begin		0	
56	12/22/2008		PUBTC	Pubs Case Remand to TC		0	
54	12/18/2008		PILS	Application Is Considered Ready for Issue		0	
53	12/16/2008		N084	Issue Fee Payment Verified		0	
52	12/16/2008		IFEE	Issue Fee Payment Received		0	
51	12/11/2008		FLRCPT.C	Filing Receipt - Corrected		0	
50	10/28/2008		QURF	Workflow - Query Request - Finish		0	
49	10/24/2008		TCPB	Printer Rush- No mailing		0	
48	10/24/2008		MM327	Mail Miscellaneous Communication to Applicant		0	
47	10/22/2008		M327	Miscellaneous Communication to Applicant - No Action Count		0	
45	10/13/2008		QURI	Workflow - Query Request - Begin		0	
46	10/09/2008		PUBTC	Pubs Case Remand to TC		0	
43	10/08/2008		WROIPE	Application Return from OIPE		0	
42	10/08/2008		FLRCPT.O	Filing Receipt		0	
41	10/08/2008		M903	Notice of DO/EO Acceptance Mailed		0	
40	10/08/2008		ROIPE	Application Return TO OIPE		0	
39	09/22/2008		EIDC	Export to Initial Data Capture		0	
38	09/19/2008		MN/=.	Mail Notice of Allowance		0	
37	09/17/2008		IREV	Issue Revision Completed		0	
36	09/17/2008		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	
35	09/17/2008		DVER	Document Verification		0	
34	09/17/2008		N/=.	Notice of Allowance Data Verification Completed		0	
33	09/15/2008		CNTA	Allowability Notice		0	
28	09/12/2008		FWDX	Date Forwarded to Examiner		0	
27	09/09/2008		A.NE	Amendment after Final Rejection		0	
26	07/17/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)		0	
25	07/15/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)		0	
22	07/10/2008		MCTFR	Mail Final Rejection (PTOL - 326)		0	
21	07/07/2008		CTFR	Final Rejection		0	
24	06/02/2008		RCAP	Reference capture on IDS		0	
23	06/02/2008	04/01/2008	M844	Information Disclosure Statement (IDS) Filed		62 17	
20	06/02/2008		IDSC	Information Disclosure Statement considered		0	
19	06/02/2008		WIDS	Information Disclosure Statement (IDS) Filed		0	
18	04/25/2008		FWDX	Date Forwarded to Examiner		0	
17	04/01/2008	01/04/2008	A...	Response after Non-Final Action		88 15	
16	04/01/2008		XT/G	Request for Extension of Time - Granted		0	
15	10/04/2007	05/03/2007	MCTNF	Mail Non-Final Rejection	154	-1	
14	10/01/2007		CTNF	Non-Final Rejection		0	
12	07/29/2007		DOCK	Case Docketed to Examiner in GAU		0	
11	07/21/2007		TSSCOMP	IFW TSS Processing by Tech Center Complete		0	
5	01/25/2007		PG-ISSUE	PG-Pub Issue Notification		0	
3	10/17/2006		OIPE	Application Dispatched from OIPE		0	

2	03/26/2006	L194	Cleared by OIPE CSR	0
4	03/04/2006	371COMP	371 Completion Date	0
13	03/03/2006	IDSC	Information Disclosure Statement considered	0
10	03/03/2006	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
9	03/03/2006	RCAP	Reference capture on IDS	0
8	03/03/2006	M844	Information Disclosure Statement (IDS) Filed	0
7	03/03/2006	A.PE	Preliminary Amendment	0
6	03/03/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
1	03/03/2006	IEXX	Initial Exam Team nn	0

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,411	08/31/2006	Anthony E. Maida III	549282000100	4515

25225 7590 03/06/2012
MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

EXAMINER
DIBRINO, MARIANNE NMN

ART UNIT	PAPER NUMBER
1644	

NOTIFICATION DATE	DELIVERY MODE
03/06/2012	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):

EOfficeSD@mofo.com
PatentDocket@mofo.com
Drcaldwell@mofo.com

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

MAR 0 6 2012

Kate H. Murashige
MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO CA 92130-2040

In re Application of	:
Maida III et al	:Decision on Petition
Serial No.: 10/570,411	:
Filed : 1 September 2004 (Int'l)	:
Attorney Docket No.: 549282000100	:

This letter is in response to the petition filed under 37 CFR 1.181 on 27 December 2011 to request reconsideration of a new ground for rejection in an examiner's answer.

BACKGROUND

On 17 December 2010, in response to a non-final Office action mailed 17 August 2010, applicants amended Claim 1 as follows.

> 1. (currently amended): A multivalent scaffold molecule containing multiple sites that allow for attachment of antigens and immunostimulatory molecules and to which a multiplicity of antigens and immunostimulatory molecules are bound, <u>wherein said immunostimulatory molecules are cytokines or chemokines</u>.

On 15 March 2011, the examiner prepared an Office action which included the new ground of rejection over a publication by Steinaa, the entirety of which follows:

> 7. Claims 1, 3-5, 12, 13, 17, 19, 20 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2004/0141958 A1 (priority to at least 10/5/91).
>
> This is a new ground of rejection necessitated by Applicant's amendment filed 12/17/10.
>
> US 2004/0141958 A1 discloses multiple copies of the same or different class I (CTL epitopes) and class II (Th epitopes) as well as a targeting moiety for antigen presenting cells such as dendritic cells and/or a cytokine and/or an adjuvant conjugated to a carrier such as dextran, and composition thereof in a pharmaceutically acceptable excipient (see entire document, especially ([0079], [0110], [01111], [0115]-[0118], [0121], [0126], [0130], [0131]).

The rejection over US 2004/0141958 (Steinaa) was made final in view of applicant's amendment.

In response filed 11 April 2011, applicants argued that "there is absolutely nothing in Steinaa which mentions a multiplicity of chemokines or cytokines being coupled to a carrier."

An advisory action mailed 22 April 2011 indicated that the amendment filed 11 April 2011 would be entered for purposes of appeal. The examiner then maintained the rejection as follows:

> With regard to the 102(e) rejection of record, US 2004/0141958 A1 discloses that the moieties that are the targeting moieties, the stimulating moieties (such as cytokines), and the antigenic moieties can be conjugated to a carrier [0110], [0110] [0115] and [0118] and refers the discussion to further disclosure which states that multiple presentations of the moieties such as the antigenic determinants may be achieved by covalent coupling the epitopes to molecules such as polymers, e.g., carbohydrates such as dextran, mannose and mannan [0130], (dextran is recited in instant claim 4, not claim 12 as asserted by Applicant). In contrast to Applicant's assertion that the art reference teaches away since paragraph 130 discusses two copies of the same epitopes, [130] discusses at least 2 copies of important epitopes, plural. In addition, the art reference discloses using both CTL and B cell epitopes, i.e., class I and class II epitopes.

On 29 June 2011, a pre-appeal conference panel decided to proceed to the Board of Patent Appeals and Interferences.

An Appeal Brief was filed on 25 July 2011.

On 2 November 2011, the examiner prepared an Examiner's Answer.

On 20 January 2012, applicants filed this petition.

On 8 February 2012, the application was remanded to the Technology Center for consideration of the petition.

DISCUSSION

Applicants' petition and file history have been considered carefully. The petition concerns this statement made on page 15, second full paragraph of the Examiner's Answer:

> The instant claim language is not exclusive of a fusion polypeptide comprising antigens, immunostimulatory molecules and targeting ligands.

Independent Claim 1, as currently pending, is set forth below:

> 1. (previously presented): A multivalent scaffold molecule containing multiple sites that allow for attachment of antigens and immunostimulatory molecules and to which a multiplicity of antigens and immunostimulatory molecules are bound, wherein said immunostimulatory molecules are cytokines or chemokines.

Applicants' claims appear to be drawn to multiple antigens and cytokines or chemokines conjugated to a multivalent scaffold molecule (carrier). This is consistent with applicants' response that "[t]here is nothing in Steinaa which mentions a multiplicity of chemokines or cytokines being coupled to a carrier."

In the Examiner's Answer, it appears that the examiner is now interpreting the independent claim as encompassing a fusion protein containing di-peptide bond linked antigens, immunostimiluatory molecules and targetting ligands. In contrast, the original one-sentence obviousness rejection used the language of "and/or" to indicate that the examiner considered the epitopes, targetting molecules and cytokines to be optionally present. This rationale differs from the claim itnerpretation set forth in the Examiner's Answer, where the claim is interpreted as reading on a fusion protein comprising antigens, immunostimulatory molecules "and" targeting ligands.

In the petition, applicants assert that they do not agree with this new interpretation of Claim 1 and that they have not been given the opportunity to argue this new interpretation.

A review of the first Office action on the merits and the final Office action failed to identify an instance where this claim interpretation had been made of record. Applicants are correct that this claim interpretation is a new ground for rejection.

37 CFR 41.39(a)(2) permits the entry of a new ground of rejection in an examiner's answer mailed on or after September 13, 2004. MPEP 1207.03 sets forth the requirements for a new ground of rejection: "Any new ground of rejection made by an examiner in an answer must be:

> (A) approved by a Technology Center (TC) Director or designee; and

(B) prominently identified in the "Grounds of Rejection to be Reviewed on Appeal" section and the "Grounds of Rejection" section of the answer (see MPEP 1207.02). The examiner may use form paragraph 12.154.04.

The examiner's answer must provide appellant a two-month time period for reply."

From a review of the examiner's answer, it is evident that the procedure in MPEP 1207.03 was not followed.

DECISION

The petition filed on 27 December 2011 under 37 CFR 1.181 is **GRANTED**.

The Examiner's Answer mailed 2 November 2011 is withdrawn.

The application will be forwarded to the examiner re-consideration of the Appeal Brief filed 25 July 2011 and the Reply Brief filed 27 December 2011. If a new ground of rejection is set forth in the Examiner's Answer, the procedure in MPEP 1207.02 is to be followed.

Should there be any questions regarding this decision, please contact Quality Assurance Specialist Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-0512 or by Official Fax at (571) 273-8300.

George E. Elliott

George Elliott
Director, Technology Center 1600

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P.O. Box 1450
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MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

MAILED
MAR 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Azim Turdiev	:	
Application No. 10/570,456	:	DECISION ON PETITION
Filed: October 24, 2006	:	
Attorney Docket No. 50558	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 2, 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 October 3, 2008. The Notice of Abandonment was mailed February 24, 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.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 1654 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
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
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GRAYBEAL JACKSON LLP
400 - 108TH AVENUE NE
SUITE 700
BELLEVUE WA 98004

MAILED
OCT 26 2010
OFFICE OF PETITIONS

In re Application of	:	
Jin et al.	:	
Application No. 10/570,509	:	DECISION ON PETITION
Filed: February 28, 2006	:	
Attorney Docket No. 2503-001-03	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 13, 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, April 22, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on July 23, 2008. A Notice of Abandonment was mailed November 7, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

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 with the petition on October 13, 2010 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 1611 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE MAXHAM FIRM
9330 SCRANTON ROAD
SUITE 350
SAN DIEGO, CA 92121

In re Application of
Stephan Blicker, et al.
Application No. 10/570,557
Filed: March 12, 2007
Attorney Docket No. 0740-78

DECISION ON PETITION

This is a decision on the petition, filed August 5, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to reply to the final Office action mailed August 13, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on May 7, 2010.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner asserts that reply to the Office action dated August 13, 2009 was not filed as he was under the impression that a new Office action would be issued in response to the arguments set forth in the amendment filed May 28, 2009.

While it is noted that there are several dates to phone conversations held between the Examiner, the examiner's Supervisor and the petitioner, a review of the written record does not provide evidence to support petitioner's position that a new Office action would be issued.

Petitioner is directed to 37 CFR 1.135 which states:

§ 1.135 Abandonment for failure to reply within time period.

(a) if applicant of a patent application fails to reply within a time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

Petitioner is further directed to 37 CFR 1.133(b) which reads in part:

> An interview does not remove the necessity for reply to Office actions as specified in § 1.111 and §1.135.

As there is no reply in the file and the petitioner has not replied to the Office action, the petition to withdraw the holding of abandonment cannot be granted at the present time.

ALTERNATIVE VENUE

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $1620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

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

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

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

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

Telephone inquiries concerning this decision should be directed to 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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THE MAXHAM FIRM
9330 SCRANTON ROAD
SUITE 350
SAN DIEGO, CA 92121

MAILED
JAN 14 2011
OFFICE OF PETITIONS

In re Application of
Stephan Blicker, et al.
Application No. 10/570,557
Filed: March 12, 2007
Attorney Docket No. 0740-78

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 15, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed August 13, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 14, 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 proposed reply required for reconsideration 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). An advisory Action is attached to this decision.

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

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

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

April M. Wise
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/570,557	Applicant(s) BLICKER ET AL.	
	Examiner ANKUR JAIN	Art Unit 2618	

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

THE REPLY FILED 15 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

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

NOTICE OF APPEAL

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

AMENDMENTS

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

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

/Yuwen Pan/
Primary Examiner, Art Unit 2618

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed November 15th, 2010 have been fully considered but they are still NOT persuasive.

The Examiner respectfully submits that Maggenti teaches "a method of operating push-to-talk communication between a group of members of an existing push-to-talk communication session within a first communication network operated by a first network operator using a Push-to-Talk over a communication system (PoC) application server" (see Paragraph 0042 and Figure 1). "Existing push-to-talk communication session...by a first network operator...using a Push-to-Talk over a communication system (PoC) application server" reads on the mobile switching center (MSC) 28, where both the "first network operator" and "Push-to-Talk over a communication system (PoC) application server" read on the mobile switching center (MSC) 28. "A group of members of an existing push-to-talk communication session" reads on CDs 12, 14, and 16. Maggenti also teaches "a group of at least one member of an additional communication network operated by a second network operator, using a Push-to-Talk over a communication system (PoC) application server" (see Paragraph 0035, 0036, 0043, and Figures 1 and 2). "Second network operator" and "Push-to-Talk over a communication system (PoC) application server" both read on the communications manager (CM) 18. "A group of at least one member of an additional communication network" reads on the net the CM 18 transmits information to, similar to CD 112 and CD 116 of Figure 2. Maggenti also teaches "connecting the additional group to the existing group of the session for push-to-talk communication" (see Paragraphs 0041 through 0043, and Figure 1). The claim limitation reads on using the distributed network 26 for "connecting" the MSC 28 with CM 18 when a PTT transmission request is received from a communication device, such as CD 108 in Figure 2. Maggenti also teaches "the group members of the additional network are known to both operators and the group members of the existing group are known to the first operator but not to the second operator" (see Paragraphs 0052 and 0054, and Figures 1 and 2). "Known to both operators" reads on the NBS media signaling 124 which is sent to the "first network operator," which then gets bypassed through the "second network operator," and ultimately to the "group members of the additional network." The reverse process also occurs, and thus according to this chain of events, "the group members of the additional network are known to both operators." Also, according to Figures 1 and 2, "the group members of the existing group are known to the first operator" reads on how media traffic 128 gets directly transmitted to the "first network operator," or MSC 28. "The existing group not known to the second operator" reads on how specific media traffic 128 containing information directed towards "group members of the additional network" is only one-way from the "existing group member" to the "group members of the additional network." Since media traffic 128 is only one-way, the "second operator does not know about the existing group," since the "group members of the additional network" cannot go against the one-way communication to provide specific information directed towards the "group members of the existing group." Maggenti does not teach "synchronizing the existing server to an additional server." However, Bensimon generally teaches "synchronizing the existing server to an additional server" (see Abstract, Paragraph 0021, and Figure 1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Maggenti with the above mentioned limitations as taught by Bensimon, for the purpose of enhancing and increasing system efficiency by introducing the concept of synchronization and by making a connection between the additional server and the existing server.

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9330 SCRANTON ROAD, SUITE 350
SAN DIEGO CA 92121

MAILED

MAR 09 2011

OFFICE OF PETITIONS

In re Application of
Stephan Blicker, et al.
Application No. 10/570,557
Filed: March 12, 2007
Attorney Docket No. 0740-78

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed February 16, 2011, 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 13, 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 November 14, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2618 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/21/09 **Paper No.:** —

TO SPE OF : ART UNIT 3636

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/570636 Patent No.: 7488039 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.

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

Comments: _____

DAVID DUNN
SUPERVISORY PATENT EXAMINER 3636

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

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	10570750
Filing Date	06-Mar-2006
First Named Inventor	Joseph Kennedy
Art Unit	1765
Examiner Name	MARGARET MOORE
Attorney Docket Number	H0004103.84722 USA -4780
Title	COATINGS AND HARD MASK COMPOSITIONS FOR INTEGRATED CIRCUIT APPLICATIONS METHODS OF PRODUCTION AND USES THEREOF

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee are not due.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.
- [x] 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.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

- ( ) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- (●) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/Sandra Poteat Thompson/
Name	Sandra Poteat Thompson
Registration Number	46264

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

Decision Date : December 12, 2011

In re Application of :

Joseph Kennedy

Application No : 10570750

Filed : 06-Mar-2006

Attorney Docket No : H0004103.84722 USA -4780

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed December 12, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic 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 the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

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

MAILED

OCT 26 2010

PCT LEGAL ADMINISTRATION

Ratner/Prestia
P.O.Box 980
Valley Forge PA 19482

In re Application of	:
UNDERBRINK et al.	:
Application No.: 10/570,833	: DECISION
PCT No.: PCT/US2004/028926	:
Int. Filing Date: 02 September 2004	:
Priority Date: 02 September 2003	:
Attorney Docket No.: SIRF-113US	:
For: SIGNAL PROCESSING SYSTEM FOR SATELLITE	:
POSITIONING SIGNALS	:

This is a decision on applicant's petition under 37 CFR 1.137(b) and 1.182 filed on 17 August 2010 in the United States Patent and Trademark Office (USPTO) in the above-captioned application requesting revival of the application an correction of the first inventor's name.

BACKGROUND

The procedural history of this application was set forth in the decision mailed on 13 July 2010 and is incorporated herein by reference.

DISCUSSION

Petition under 37 CFR 1.182

Applicant's " Petition under 37 CFR 1.182" requests a change inventor Protic's first name toVojislav. The $400 petition fee was charged to applicant's deposit account per the authorization. Applicant indicates that inventor Vojislav Protic's name was erroneously entered in a short form in the international Application PCT/US04/028926. The petition under 37 CFR 1.182 to change the respective inventor's name to **Vojilsav Protic** is GRANTED. The USPTO records will reflect this correction.

Petition under 37 CFR 1.137(b)

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply unless previously filed, (2) the petition fee required by law; (3) a statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to this paragraph was

unintentional".

Applicant has satisfied Item (1) with the grantable petition under 37 CFR 1.182 to correct inventor Protic's first name to Vojislav. Declarations by the joint inventors were provided and are acceptable. Applicant paid the required petition fee, satisfying Item (2). Item (3) above is satisfied because the present petition includes the statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. In light of the above, the petition to revive is GRANTED.

CONCLUSION

Applicant's request under 37 CFR 1.182 to correct the first inventor's last name to is **GRANTED**. Inventor **Vojilsav Protic**'s name is corrected in the USPTO record. Applicant's petition under 37 CFR 1.137(b) to revive the application is **GRANTED**.

The application will be forwarded to the U.S. Designated/Elected Office for further processing in accordance with this decision. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is 15 October 2009.

/Cynthia M. Kratz/
Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Telephone: (571) 272-3286
Facsimile: (571) 272-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BRINKS, HOFER, GILSON & LIONE
P.O. BOX 110285
RESEARCH TRIANGLE PARK NC 27709

MAILED

MAY 20 2011

OFFICE OF PETITIONS

In re Application of	:	
BAUMANN, et al	:	
Application No. 10/570,854	:	DECISION ON PETITION
Filed: March 7, 2006	:	TO WITHDRAW
Attorney Docket No. 13779-60	:	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 4, 2011.

The request is **NOT APPROVED.**

The request cannot be approved because no correspondence address for future communications from the Office has been provided.

The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

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.

/DCG/
Diane C. Goodwyn
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

GORDON E NELSON
PATENT ATTORNEY, PC
57 CENTRAL ST
PO BOX 782
ROWLEY MA 01969

MAILED
JAN 09 2012
OFFICE OF PETITIONS

In re Application of	:	
Steven J. Hollinger	:	
Application No. 10/570,861	:	DECISION ON PETITION
Filed: March 7, 2006	:	TO WITHDRAW
Attorney Docket No. hollin01.003	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 1, 2011.

The request is **APPROVED**.

The request was signed by Gordon E. Nelson on behalf of the practitioners of record associated with Customer Number 25247.

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

All future correspondence will be directed to inventor Steven Hollinger at the address indicated below.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Steven Hollinger
21 Wormwood Street, Unit 215
Boston MA 02210-1632

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
10/570,861	03/07/2006	Steven J. Hollinger	hollin01.003

CONFIRMATION NO. 7099

POWER OF ATTORNEY NOTICE

25247
GORDON E NELSON
PATENT ATTORNEY, PC
57 CENTRAL ST
PO BOX 782
ROWLEY, MA 01969

OC000000051870223

Date Mailed: 01/09/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/01/2011.

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

/idingle/

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

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
10/570,861	03/07/2006	Steven J. Hollinger	hollin01.003

CONFIRMATION NO. 7099

POA ACCEPTANCE LETTER

Steven Hollinger
21 Wormwood Street, Unit 215
Boston, MA 02210-1632

OC000000051870249

Date Mailed: 01/09/2012

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/01/2011.

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

/idingle/

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

2 7 AUG 2010

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

Joseph C. Zucchero
WOOD, PHILLIPS, KATZ, CLARK, & MORTIMER
500 W. Madison Street, Suite 3800
Chicago, Illinois 60661

In re Application of	:	
TURECI et al.	:	DECISION ON
Application No.: 10/570,957	:	
PCT No.: PCT/EP2004/010164	:	PETITION UNDER
Int. Filing Date: 10 SEPTEMBER 2004	:	
Priority Date: 10 SEPTEMBER 2003	:	37 CFR 1.181
Attorney's Docket No.: VOL10640P00010US	:	
For: GENETIC PRODUCTS WHICH ARE	:	
DIFFERENTIALLY EXPRESSED IN	:	
TUMORS AND USE THEREOF	:	

This decision is in response to applicant's "Petition to the Director under 35 U.S.C. § 1.181," filed 16 April 2010 and 01 June 2010 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

07 March 2006, applicants filed a submission for entry into the national stage in the United States, including, *inter alia*, payment of a $300 basic national fee for a non-small entity and a copy of published international application PCT/EP2004/010164, which contained 184 pages and an additional 194-page sequence listing in .pdf format.

On 10 March 2006, applicants filed an executed "Declaration and Power of Attorney."

On 18 September 2006, the USPTO issued a "Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)" indicating that applicant needed to satisfy supplemental fee problems, including additional claim fees, a surcharge for late submission of filing fee, search fee, examination fee or oath or declaration, excess page fees for 84 pages in excess of 100, search fee, and examination fee, each for a non-small entity, totaling $9340.

On 22 November 2006, applicants filed a "Response to Notice to File Missing Parts of Nonprovisional Application" including a preliminary amendment and a total payment of $2630, together with an authorization to charge any additional fees to a deposit account and a box checked indicating "Applicant claims small entity status."

On 02 November 2007, the USPTO issued a "Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.495" and a Filing Receipt indicating a date of completion of all 35 U.S.C. 371 requirements of 10 March 2006.

The electronic file wrapper contains a "Comment Sheet" dated 28 April 2008, under document code "371 Requirements for Sequence Disclosure Notice form M922," indicating that the application does not comply with the requirements for disclosure of nucleotide and/or amino acid sequences as set forth in 37 CFR 1.821-1.825. The sheet contained no address box, nor was it accompanied by a cover letter.

On 18 March 2010, the USPTO issued a "Letter Regarding a New Notice and/or the Status of the Application" indicating that "applicant may disregard the previous notice mailed on 11/02/2007," together with a "Notification of Defective Response," acknowledging applicant's response filed 28 April 2008, and indicating that the requirements set forth in the "Notification of Missing Requirements" mailed 18 September 2006 have not been completed. It was noted that a copy of the sequence listing in computer readable form (CRF) has been submitted, however, the content does not comply with the requirements of 37 CFR 1.822 and/or 1.823, as indicated on the attached copy of the marked-up "Raw Sequence Listing." No marked-up listing was attached. The form indicated that a substitute CRF of the sequence listing was required, together with a statement of its identity to the written sequence listing.

On 16 April 2010, applicant filed a "Reply to Notification of Defective Response," including a sequence listing in .txt format. No statement of its identity to the written sequence listing was provided. Applicant also filed a "Petition to the Director under 37 C.F.R. § 1.181," requesting withdrawal of the "Notification of Defective Response" issued 18 March 2010.

On 29 April 2010, the sequence listing CRF was accepted.

On 03 May 2010, the USPTO issued a second "Notification of Defective Response," indicating that additional fees of $350 for a large entity were required, $230 to complete the search fee and $120 to complete the examination fee.

On 01 June 2010, applicant filed a second "Reply to Notification of Defective Response" and a second "Petition to the Director under 37 C.F.R. § 1.181," requesting withdrawal of the "Notification of Defective Response" issued 03 May 2010.

DISCUSSION

Sequence Listing Compliance

Petitioners argue that the "Notification of Defective Response" issued 18 March 2010, requiring a substitute CRF of the sequence listing, should be withdrawn. Specifically, Petitioners

argue that the "Notification of Missing Requirements" issued 18 September 2006 required only supplemental fees, which were satisfied by the response filed 22 November 2006. No issues were raised with regard to the sequence listing and no substitute CRF was required. Petitioners never received the "Comment Sheet" under document code "371 Requirements for Sequence Disclosure Notice form M922" and it is not clear the document was ever mailed. Therefore, petitioners argue, the proper mechanism was for the USPTO to issue a new office action requesting correction of any CRF defects.

The "Notification of Defective Response" characterizes the "Comment Sheet" dated 28 April 2008 as a response by Applicant. In fact, the document was an internal notification generated by Technology Center 1600 indicating that a CRF of the sequence listing was required for this application. The sheet contained no address box, nor was it accompanied by a cover letter containing an address, and therefore, it appears that the document was never mailed to Applicant.

Because there was no prior notice, either in the "Notification of Missing Requirements," or any other document, the USPTO should have issued a "Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures" (Form DO/EO/922) requiring the substitute CRF and statement of identity, rather than issuing the "Notification of Defective Response." Therefore, the "Notification of Defective Response" is hereby vacated.

Notwithstanding this vacated notification, it is noted that petitioners still have not complied with the requirements of 37 CFR 1.825. The Sequence Listing provided on 16 April 2010 appears to contain changes over the Sequence Listing originally provided on the international filing date as part of the international application. According to the Legal Framework for Electronic Filing System-Web (EFS-Web), specifically, Section I1.3., while applicant may amend a sequence listing originally provided in paper by providing a single replacement text file in EFS-Web, the sequence listing text file must be accompanied by: (1) a statement that the submission does not include any new matter, and (2) a statement that indicates support for the amendment in the application, as filed. *See* 37 CFR 1.825. While the statement under item 1 has been provided, the statement under item 2 has not. In addition, the specification must contain an incorporation-by-reference of the material in the ASCII text file in a separate paragraph identifying the name of the ASCII text file, the date of creation, and the size of the ASCII text file in bytes similar to the requirements of 37 CFR 1.52(e)(5) for compact discs.

<u>Fees</u>

Petitioners argue that the "Notification of Defective Response" issued 03 May 2010, requiring additional fees for a non-small entity, should be withdrawn. Specifically, Petitioners argue that the notice required additional fees for a large entity, when petitioners had timely responded on 22 November 2006 to the "Notification of Missing Requirements" issued 18 September 2006, claiming small entity status and paying the appropriate fees.

Petitioners claim to small entity status in the 22 November 2006 response is acknowledged. Review of the fees paid on that date as indicated on the Fee Transmittal reveals the following: the search fee was in excess by $50; the total number of claims was deficient by 1; the number of independent claims was in excess by 12; the number of sheets of the application was deficient by

194 (sequence listing sheets filed as part of the international application); and the surcharge was not reduced for small entity. On 30 November 2006, the following fees were adjusted/charged: the search fee and exam fee were correctly adjusted for a small entity; and a charge was improperly made for a multiple dependent claim, since the preliminary amendment of that date removed the multiple dependency. The net refund to petitioners is $920.00.

CONCLUSION

The petitions under 37 CFR 1.181 are GRANTED.

For reasons above, the sequence listing submission filed 16 April 2010 fails to comply with the sequence listing rules. Applicant is hereby given TWO (2) MONTHS from the mailing date of this communication to comply with the sequence listing rules, 37 CFR 1.821-1.825. This two-month period is extendable under 37 CFR 1.136(b). Failure to furnish the proper reply will result in ABANDONMENT of the application.

This application is being forwarded to the Office of Patent Application Processing to await receipt of the required sequence listing submission.

Susan C. Wolski
PCT Special Programs Examiner
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3304
Facsimile: (571) 273-0459

Boris Milef
PCT Legal Examiner
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MORGAN & FINNEGAN TRANSITION TEAM
C/O LOCKE, LORD, BISSELL & LIDDELL
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

MAILED

AUG 11 2010

OFFICE OF PETITIONS

In re Application of	:	
Andrew John Martin	:	
Application No. 10/570,990	:	DECISION ON PETITION
Filed: November 14, 2006	:	
Attorney Docket No. 4891-0001	:	

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed July 9, 2010, to revive 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. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

The petition is **DISMISSED.**

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed September 11, 2009 , 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 October 12, 2009, by operation of law.

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). The instant petition lacks item (3).

Petitioner attests that the response to the non-final Office action mailed September 11, 2009 was unavoidable because the Office action was never received. A review of the record indicates that the Office action was mailed to the address of record.

A further review of the record shows that while the petitioner did file a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address, revoking all prior powers of attorney in this application and appointing new attorney by Customer No. 23448, however, the power of attorney was not acceptable because it was signed by the assignee who had not properly intervened.

The revocation and power of attorney 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.

As it appears that Mr. Martin is signing on behalf of an assignee, compliance with 37 CFR 3.73(b) must be satisfied. In this regard, 37 CFR 3.73(b) provides:

> (1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:
>
> (i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment * * * For patent matters only, the submission of the documentary evidence must be accompanied by 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).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

(c) For patent matters only:

(1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.

(2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership. 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 (Mr. Andrew Martin) is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the request is considered to be improper.

The showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> 'The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

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).

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

Accordingly, petitioner's failure to file a proper Revocation of Power of Attorney and Change of Correspondence Address in not unavoidable delay.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Any further petition to revive must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration

request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

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

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

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

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

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

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MORGAN & FINNEGAN TRANSITION TEAM
C/O LOCKE LORD BISSELL & LIDDELL
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

In re Application of
Andrew John Martin
Application No. 10/570,990
Filed: November 14, 2006
Attorney Docket No. 4891-0001

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 13, 2010 and resubmitted September 15, 2010, to revive 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. 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 application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed September 11, 2009, which set a shortened statutory period for reply of one (1) month or thirty (30) days or (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 12, 2009, by operation of law.

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 $810, and (3) a proper statement of unintentional delay.

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

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1714 for appropriate action by the Examiner in the normal course of business on the reply received July 9, 2010.

April M. Wise
Petitions Examiner
Office of Petitions

cc: DAVID BRADIN
PO BOX 14329
RESEARCH TRIANGLE PARK, NC 27709

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Davidson, Davidson & Kappel, LLC
485 7th Avenue, 14th Floor
New York, NY 10018

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NOV 19 2010
OFFICE OF PETITIONS

In re Application of :
David MORTON, et *al.* :
Application No. 10/571,184 : DECISION GRANTING PETITION
Filed: July 17, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **478.1077** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 10, 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 October 28, 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 1623 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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21 SEP 2010

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Hoffmann & Baron, LLP
6900 Jericho Turnpike
Syosset, NY 11791

In re Application of
EBRIGHT et al.
Serial No.: 10/571,226
PCT No.: PCT/US2004/028640
Int. Filing Date: 02 September 2004
Priority Date: 04 September 2003
Atty. Docket 74447 PCT II/US
For: TARGET AND METHOD FOR INHIBITION OF BACTERIAL RNA POLYMERASE MINIMIZED DERIVATIVES OF PEPTIDE ANTIBIOTIC MCCJ25

DECISION

This decision is issued in response to applicants' "Petition To Vacate Notice of Defective Response and Submission of Sequence Listing" filed 03 August 2010 treated herein as a petition under 37 CFR 1.181. No petition fee is due.

BACKGROUND

On 02 September 2004, applicants filed international application PCT/US2004/028640 which claimed a priority date of 04 September 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire on 22 March 2006.

On 06 March 2006, applicants filed a Transmittal Letter for entry into the national stage accompanied, inter alia, by: the requisite basic national fee; a copy of the international application; and a copy of the international search report.

On 30 October 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date was required.

On 18 December 2006, applicants filed a response to the Notification Of Missing Requirements that included a declaration (executed by one of the two inventors) and the required surcharge.

On 09 January 2007, the United States Designated/Elected Office (DO/EO/US)

mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration was defective because "the declaration is missing the second inventor."

On 15 February 2007, applicants filed a response to the Notification Of Defective Response that included an executed declaration.

On 21 May 2007, a Notification of Acceptance and Official Filing Receipt were mailed identifying the 35 U.S.C. 371(c) date as 15 February 2007.

On 22 March 2010, the DO/EO/US mailed a "Notification Of Defective Response (Form PCT/DO/EO/916). The Notification Of Defective Response acknowledged receipt of the 19 March 2010 response, but went on to state that the nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements set forth in 37 CFR 1. 1.821- 825 and that a copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e). The Notification also identified these sequence listing materials as "requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 10/30/2006" that had not been completed, and provided a non-extendable one-month response period.

On 03 August 2010, applicants filed a "Petition To Vacate Notice of Defective Response and Submission of Sequence Listing." The submission includes materials responsive to the sequence listing requirements set forth in the Notification Of Defective Response considered herein.

On 16 September 2010, the DO/EO/US mailed a "Notification Of Defective Response (Form PCT/DO/EO/916).

DISCUSSION

As discussed above, the Notification Of Missing Requirements mailed 30 October 2006 identified only two outstanding requirements in the present application: an executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date. The Notification Of Missing Requirements did not identify any deficiency or outstanding requirement with respect to the sequence listing materials. Applicants' 18 December 2006 and 15 February 2007 response to the Notification of Missing Requirements included both the requirements identified in the Notification Of Missing Requirements, that is, an executed declaration and the required surcharge. Applicants' 18 December 2006 and 15 February 2007 submissions were therefore a complete and proper response to the Notification Of Missing Requirements.

The 22 March 2010 and 16 September 2010 mailing(s) of the Notification Of Defective Response requiring the submission of sequence listing materials that had not been identified as outstanding requirements in the Notification Of Missing Requirements was therefore improper. The Notification Of Defective Response mailed 22 March 2010 and 16 September 2010 are therefore appropriately vacated.

The present petition was accompanied by a Sequence Listing in Paper and Computer Readable Form. A review of the Raw Sequence Listing by the Biotechnology Systems Branch of the Scientific and Technical Information Center (STIC) reveals that the nucleotide and/or amino acid sequence disclosure contained in the application does not comply with the requirement for such a disclosure as set forth in 37 CFR 1.821 -1.825. (See PRIVATE PAIR for document entitled Computer Readable Form (CRF) for Sequence Listing - Defective dated 10 August 2010.) Accordingly, the proper reply has not been furnished.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED** and the Notification Of Defective Response (Form PCT/DO/EO/916) mailed 22 March 2010 is hereby **VACATED**.

Additionally, the Notification Of Defective Response (Form PCT/DO/EO/916) mailed 16 September 2010 is hereby **VACATED**

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification Of Missing Requirements" (Form PCT/DO/EO/905) or a Notification to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/922) indicating that applicant has not submitted the required sequence listing pursuant to 37 CFR 1.821-1.825.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459

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

MAILED
JUL 13 2011
OFFICE OF PETITIONS

In re Patent No. 7,906,036	:	
Issue Date: March 15, 2011	:	
Application No. 10/571,354	:	DECISION ON PETITION
Filed: March 10, 2006	:	
Attorney Docket No. Q93593	:	

This is a decision on the Request For Correction Of Assignee Under 37 C.F.R. §3.81(b) and Request For Certificate Of Correction, filed June 3, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"NEOMAX Co., Ltd., Osaka (JP)"

to:

--Hitachi Metals, Ltd., Tokyo (JP)--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR §1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR §1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form submitted with Petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,906,036.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

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JAN 31 2011

OFFICE OF PETITIONS

In re Application of	:	
Arul, et al.	:	
Application No. 10/571,419	:	ON REQUEST FOR
Filed: May 31, 2007	:	RECONSIDERATION OF
Attorney Docket Number: V0005.70101US00	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed December 1, 2010. Applicants believe that they should be accorded an additional PTA of 415 days. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

In view thereof, the correct determination of PTA prior to issuance is **zero (0) days**.

The application is being forwarded to the Office of Data Management for issuance of the patent.

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

Anthony Knight
Director
Office of Petitions

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

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ELI LILLY & COMPANY
PATENT DIVISION
P.O. BOX 6288
INDIANAPOLIS IN 46206-6288

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APR 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Burton et al.	:	
Application No. 10/571437	:	ON REQUEST FOR
Filing or 371(c) Date: 03/13/2006	:	RECONSIDERATION OF
Attorney Docket Number:	:	PATENT TERM ADJUSTMENT
X14445	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed February 28, 2011. Applicants petition for reconsideration of the patent term adjustment calculation to 914 days, not 426 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction based upon (1) an assertion that the Office erred in calculating a delay of 225 days, and (2) on the basis that the Office will take in excess of three years to issue this patent. The petition is properly treated under 37 C.F.R. § 1.705(b).

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), as it relates to the assertion that the Office erred in calculating a delay of 255 days is **GRANTED to the EXTENT INDICATED**.

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), 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**.

On December 1, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 426 days.

On February 28, 2011, applicants timely submitted the instant application for patent term adjustment[1]. Applicants request that the Determination of Patent Term Adjustment be corrected from 426 days, as indicated on the Determination of PTA mailed December 1, 2010, to an adjustment of 941 days. Applicants aver that the Office erred in calculating a delay of 225 days, and that applicants are entitled to an adjustment under 37 CFR 1.702(b) of 718 days.

[1] PALM records show that the Issue Fee payment was received in the Office on February 28, 2011.

Applicants' do not dispute adjustments of 196 days pursuant to 37 CFR 1.702(a)(1), and 455 days pursuant to 37 CFR 1.702(e).

As to the assertion that the Office erred in calculating a delay of 225 days, the present request for reconsideration of patent term adjustment indicates that the Office erred in calculating a delay of 225 days in connection with the filing of a reply to a Restriction Requirement, on August 27, 2008, 225 days after filing a reply to a Restriction Requirement on January 15, 2008. Applicants note that on December 20, 2007, a first action was mailed by this Office, and Applicants' filed a reply on January 15, 2008. Applicants note further that on April 1, 2008, a second action was mailed by this Office, wherein the Examiner stated that the previous action is withdrawn and this action constitutes a new restriction. Petition at p.5. Applicants next note that this Office mailed a third action on July 29, 2008, wherein the Examiner again stated that the previous action is withdrawn and this action constitutes a new restriction.

A review of Office records reveals that a Restriction Requirement was mailed on December 20, 2007. Applicants filed a timely reply to the Restriction Requirement on January 15, 2008. The Office mailed a second Restriction Requirement on April 1, 2008. A copy of the April 1, 2008 Restriction Requirement was re-mailed on July 29, 2008. Applicants filed a reply to the April 1, 2008 Restriction Requirement on August 27, 2008.

Applicants' argument has been carefully considered. On December 20, 2007, the Office issued an action as a result of the examination conducted pursuant to 35 U.S.C. 131. Applicants' filed a timely reply to the Office action on January 15, 2008. Thereafter, on April 1, 2008, the Office issued a second action as a result of the examination conducted pursuant to 35 U.S.C. 131. The subsequent action in this case – the re-mailing of the April 1, 2008 Restriction Requirement - does not negate the fact that an Office action as a result of the examination conducted pursuant to 35 U.S.C. 131, was mailed on April 1, 2008. Accordingly, the period of examination delay is properly calculated based on the April 1, 2008 date.

The reduction of 57 days, commenced July 2, 2008, the day after the date that is three months after the date of mailing of the Restriction Requirement, mailed April 1, 2008, and ending on the date the reply was filed, August 27, 2008. As such, the reduction of 225 days pursuant to 37 CFR 1.704(c)(7) is incorrect and has been removed, and the application is properly assessed a reduction of 57 days in connection with the filing of the reply to the Restriction Requirement on August 27, 2008.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is five hundred ninety-four (594) days (adjustments totaling 651 days less reductions totaling 57 days).

As to the Office's failure to issue the patent within 3 years of the filing 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 § 1.702(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[2].

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, including any request as it relates to the Office's failure to issue the patent within 3 years of the filing date, 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. 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).

---

[2] 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.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 10571437 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10571437

Application Filing Date	03/13/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	651
A Delays	196	PTO Manual Adjustment	168
B Delays	0	Applicant Delay (APPL)	225
C Delays	455	Total PTA (days)	594

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
88	04/08/2011		PO28	Adjustment of PTA Calculation by PTO	168		0
77	12/01/2010		MN/=.	Mail Notice of Allowance			0
76	11/24/2010		IREV	Issue Revision Completed			0
75	11/24/2010		DVER	Document Verification			0
74	11/24/2010		N/=.	Notice of Allowance Data Verification Completed			0
73	11/24/2010		DOCK	Case Docketed to Examiner in GAU			0
72	11/24/2010		EX.A	Examiner's Amendment Communication			0
71	11/24/2010		CNTA	Allowability Notice			0
67	11/10/2010		ELC_RVW	Electronic Review			0
66	11/10/2010		EML_NTF	Email Notification			0
65	11/10/2010	08/13/2009	MAPDR	Mail BPAI Decision on Appeal - Reversed	455		44
64	11/08/2010		APDR	BPAI Decision - Examiner Reversed			0
63	05/14/2010		EML_NTR	Email Notification			0
61	05/14/2010		AP_DK_M	Docketing Notice Mailed to Appellant			0
60	05/12/2010		APAS	Assignment of Appeal Number			0
59	05/10/2010		APWD	Appeal Awaiting BPAI Docketing			0
58	05/06/2010		ARBP	Appeal ready for BPAI review			0
57	03/01/2010		PACC	Exam. Ans. Review Complete			0
56	02/08/2010		ELC_RVW	Electronic Review			0
55	02/08/2010		EML_NTF	Email Notification			0
54	02/08/2010		MAPEA	Mail Examiner's Answer			0
53	02/02/2010		APEA	Examiner's Answer to Appeal Brief			0
52	11/20/2009		APBR	Appeal Brief Review Complete			0
51	11/20/2009		FWDX	Date Forwarded to Examiner			0
50	11/05/2009		AP.B	Appeal Brief Filed			0
49	11/05/2009		EML_NTR	Email Notification			0
48	11/05/2009		APBD	Notice -- Defective Appeal Brief			0
47	10/30/2009		APBR	Appeal Brief Review Complete			0
46	10/30/2009		FWDX	Date Forwarded to Examiner			0
45.1	10/13/2009		APBI	Defective / Incomplete Appeal Brief Filed			0
45	10/13/2009		AP.B	Appeal Brief Filed			0
44	08/13/2009		N/AP	Notice of Appeal Filed			0
43	07/30/2009		EML_NTR	Email Notification			0
42	07/30/2009		MCTAV	Mail Advisory Action (PTOL - 303)			0
41	07/28/2009		CTAV	Advisory Action (PTOL-303)			0
40	07/14/2009		FWDX	Date Forwarded to Examiner			0
39	07/10/2009		A.NE	Amendment after Final Rejection			0
38	05/13/2009		ELC_RVW	Electronic Review			0
37	05/13/2009		EML_NTF	Email Notification			0
36	05/13/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
35	05/11/2009		CTFR	Final Rejection			0
34	03/24/2009		FWDX	Date Forwarded to Examiner			0
33	02/24/2009		A...	Response after Non-Final Action			0
32	11/24/2008		ELC_RVW	Electronic Review			0
31	11/24/2008		EML_NTF	Email Notification			0
30	11/24/2008		MCTNF	Mail Non-Final Rejection			0
29	11/20/2008		CTNF	Non-Final Rejection			0
28	09/17/2008		FWDX	Date Forwarded to Examiner			0
27	08/27/2008	01/15/2008	ELC.	Response to Election / Restriction Filed		225	20
26	07/29/2008		EML_NTR	Email Notification			0
25	07/29/2008		MNRES	Mail Notice of Restarted Response Period			0
24	07/24/2008		NRES	Letter Restarting Period for Response (i.e. Letter re: References)			0
23	04/01/2008		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
22	02/05/2008		DOCK	Case Docketed to Examiner in GAU			0
21	01/29/2008		FWDX	Date Forwarded to Examiner			0
20.1	01/15/2008		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
20	01/15/2008		ELC.	Response to Election / Restriction Filed			0
19	12/30/2007		PST_CRD	Mail Post Card			0
18	12/22/2007		EML_NTF	Email Notification			0
17	12/20/2007	06/07/2007	MCTRS	Mail Restriction Requirement	196		6
16	12/18/2007		CTRS	Restriction/Election Requirement			0
15	11/19/2007		DOCK	Case Docketed to Examiner in GAU			0
12	03/01/2007		DOCK	Case Docketed to Examiner in GAU			0
11	03/01/2007		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
10	02/27/2007		ELC_RVW	Electronic Review			0
9	02/26/2007		EML_NTF	Email Notification			0
8	02/26/2007		PG-ISSUE	PG-Pub Issue Notification			0
5	11/14/2006		OIPE	Application Dispatched from OIPE			0
4	11/03/2006		CLSS	CASE CLASSIFIED BY OIPE			0
6	04/07/2006		371COMP	371 Completion Date			0
0.5	10/04/2004		NEFILE	International Filing date			0

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ELI LILLY & COMPANY
PATENT DIVISION
P.O. BOX 6288
INDIANAPOLIS IN 46206-6288

MAILED
AUG 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Burton et al.	:	DECISION ON REQUEST
Patent Number: 7,943,670	:	FOR RECONSIDERATION OF
Issue Date: 05/17/2011	:	PATENT TERM ADJUSTMENT
Application No. 10/571437	:	and
Filing or 371(c) Date: 03/13/2006	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: X14445	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on July 8, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred sixty-seven (967) days, or alternatively by eight hundred thirty-nine 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 nine hundred sixty-seven (967) days, or alternatively by eight hundred thirty-nine days is **GRANTED to the extent indicated herein**.

As to the "B" delay, the period is 314 days, not 316 days. Patentee calculated this period as the sum of the day after the date that is 30 months from the earliest priority date claimed, April 8, 2009, and ending on the day that a Notice of Appeal to the Board of Patent Appeals and Interferences ("Board"), was filed, August 13, 2008, or 128 days[1], and the day after the date that final decision of the Board was mailed, November 11, 2010, and ending on the date the patent issued, or 188 days, for a total of 316 days. However, the calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date of April 9, 2007, not April 8, 2007. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Saturday, the period expired on the subsequent business day[2]. See PCT Rule 80.5. Accordingly, the commencement date is Monday, April 9, 2007, and 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 is 455 days, beginning on August 13, 2009, and ending on November 10, 2010, the date of mailing of the non-final Office action. Thus, B delay period is 314 (769 – 455) days.

[1] The "B" delay period excludes the day that the Notice of Appeal was filed.
[2] The commencement date may be earlier than 30 months where (1) an applicant expressly requested early commencement, and completed all requirements under 35 U.S.C. 371(c).

Patentees also assert that the Office erred in calculating an adjustment in connection with the filing of a reply to a Restriction Requirement, mailed on July 29, 2008, on August 27, 2008. Patentees note, and Office records confirm, that the Office mailed a Restriction Requirement on December 20, 2007. Patentees filed a timely reply to the Restriction Requirement on January 15, 2008. The Office mailed a second Restriction Requirement on April 1, 2008. A copy of the April 1, 2008 Restriction Requirement was re-mailed on July 29, 2008[3]. Patentees aver that the July 29, 2008 USPTO action is indicated as a Notice to Restarted Response Period. Patentees filed a reply to the April 1, 2008 Restriction Requirement, on August 27, 2008, and also note that the reply filed August 27, 2008 was not associated with an extension of time.

Patentee' argument has been carefully considered. On April 1, 2008, the Office issued an action as a result of the examination conducted pursuant to 35 U.S.C. 131. The subsequent action in this case – the re-mailing of the April 1; 2008 Restriction Requirement - does not negate the fact that an Office action as a result of the examination conducted pursuant to 35 U.S.C. 131, was mailed on April 1, 2008. Moreover, Patentees agree that the re-mailed Restriction Requirement was identical to the April 1, 2008 Restriction Requirement, and do not aver that a reply to the April 1, 2008 Restriction Requirement was filed prior to August 27, 2008. Accordingly, the period of examination delay is properly calculated based on the April 1, 2008 date, and the application is properly assessed a reduction of 57 days in connection with the filing of the reply to the Restriction Requirement on August 27, 2008.

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

The Office 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 Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by nine hundred eight **(908)** days.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

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[3] Patentees agree that this action appears to be identical to the action mailed April 1, 2008.

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,943,670 B2

DATED : May 17, 2011

INVENTOR(S) : Burton et al.

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 594 days.

Delete the phrase "by 594 days" and insert – by 908 days--

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,459	12/10/2007	Wolfgang Frey	31775-228881 RK	6583

26694 7590 01/14/2011
VENABLE LLP
P.O. BOX 34385
WASHINGTON, DC 20043-9998

EXAMINER
MILLER, BENA B

ART UNIT	PAPER NUMBER
3725	

MAIL DATE	DELIVERY MODE
01/14/2011	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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VENABLE LLP
P.O. BOX 34385
WASHINGTON DC 20043-9998

In re Application of:
FREY, WOLFGANG et al
Serial No.: 10/571,459
Filed: Dec. 10, 2007
Docket: 31775-228881 RK
Title: METHOD FOR OPERATING A FRAGMENTATION SYSTEM AND SYSTEM THEREFOR

DECISION ON PETITION TO REVIEW RESTRICTION REQUIREMENT UNDER 37 CFR 1.144

This is a decision on the petition filed Oct. 12, 2010 to review the restriction requirement promulgated on Feb. 17, 2010. The petition is being considered pursuant to 37 CFR 1.181 and CFR 1.144 and no fee is required for the petition.

The petition is dismissed as moot.

In his October 12, 2010 petition, petitioner requests the examiner to withdraw the restriction requirement issued on February 17, 2010 regarding claims 1-6 directed to method for operating a fragmentation system under MPEP § 806.05(h) because the applicant believes that the restriction requirement do not meet the criteria for a proper restriction under the guidelines set forth in MPEP § 1850. In particular, petitioner argues that the currently application is filed under 35 USC 371. For restriction purposes, the applicable PCT rules govern. The examiner has applied a wrong standard when making the restriction requirement. Therefore, the request of withdrawal of the restriction requirement and reinstatement of method claims 1-6 in the application should be granted.

On October 12, 2010, the applicant has filed a Rule 111 amendment to the elected claims 7-12 and the withdrawn and non-elected claims 1-6. In view of the substantive amendment to at least the elected independent claim 7 and withdrawn non-elected claim 1 which changes the scope of the elected and non-elected inventions as claimed, the original restriction requirement of February 17, 2010 is no longer applicable. The propriety of the restriction requirement cannot be decided. The requested relief can not be granted. However, in order to clarify the status of the restriction requirement in view of the Rule 111 amendment, the examiner is directed in the next Office action to provide a complete restriction requirement based on the current amended claims 1-12 in accordance with the PCT Rule practices and procedures or totally withdraw the restriction requirement of February 17, 2010 and rejoin the non-elected method claims 1-6.

After consulting with the examiner, it was agreed that the original restriction requirement of February 17, 2010 should be withdrawn in view of the Rule 111 amendment of October 12, 2010. An Office action clarifying and/or modifying the restriction requirement will follow in due course.

The application is being forwarded to the examiner via the Supervisory Patent Examiner for preparation of an Office action in response to the applicant's arguments regarding the alleged improper restriction of February 17, 2010.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED as MOOT

for

Angela D. Sykes, Director
Technology Center 3700

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,483	03/14/2006	Steven Rudkin	36-1972	6513

23117 7590 08/02/2011
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER
JOHN, CLARENCE

ART UNIT	PAPER NUMBER
2443	

MAIL DATE	DELIVERY MODE
08/02/2011	PAPER

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TECHNOLOGY CENTER 2400

Larry S. Nixon
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of: RUDKIN, Steven
Application No. **10/571,483**
Filed: March 14, 2006
Docket No. 36-1972
Title: INTER-DOMAIN CONGESTION CHARGING

DECISION ON PETITION
UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed **July 08, 2011** filed under 37 CFR § 1.181 and §1.127 to invoke Supervisory Authority of the Commissioner to require the Examiner to allow entry of After-Final amendment filed under CFR §1.116 on June 23, 2011.

The above-mentioned After Final according to Examiner's statement set forth on Advisory Action mailed April 02, 2009, regarding amendments to claim 16, reciting "at least one data processor configured to..." will raise new issues that would require further consideration and/or New search."

The above-mentioned petition is hereby **GRANTED**.

REGULATION PRACTICES AND PROCEDURES

§ 1.116. Amendments and affidavits or other evidence after final action and prior to appeal.

(a) An amendment after final action must comply with § 1.114 or this section.

(b) After a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913, but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title):

(1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action;

(2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted; or

(3) An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

OPINION

Relevant prosecution history of instant application with respect to the petition hereby considered has been reviewed. In this case, regarding claim 16, claimed clause "congestion charging means arranged in use to generate one or more respective congestion charge signals..." as filed 06/23/11 via an After-Final was filed to obviate rejection of claims 16-20 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as invention on the basis of invoking §112, sixth paragraph (action p. 5-6 of action mailed 03/24/11).

The after final amendment file 03/24/11 is found in compliance with § 1.116 as the amendment complying with any requirement of form expressly set forth in a previous Office action; and/or the amendment presents rejected claims in better form for consideration on appeal may be admitted.

Accordingly, this petition is **granted.**

Application will be returned to examiner for proper entry of the above mentioned after-final amendment.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/bp/

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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FISH & RICHARDSON P.C. (SD)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent of Tor et al.	:
Patent No. 8,071,535	: DECISION ON REQUEST FOR
Issue Date: December 6, 2011	: RECONSIDERATION OF
Application No. 10/571,510	: PATENT TERM ADJUSTMENT
Filed: December 8, 2006	:
Attorney Docket No. 15670-0198US1/SD2002-135	:

This is a decision on the petition filed on February 3, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred two (1102) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

BACKGROUND

On December 6, 2011, the above-identified application matured into U.S. Patent No. 8,071,535, with a revised patent term adjustment of 975 days. On February 3, 2012, 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 1102. Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on August 2, 2011, thereby closing examination of the application on that date. Thus, patentees argue no continued examination took place during the 127 day period from August 2,

2011 (the mailing date of the Notice of Allowance) until December 6, 2011 (the date the patent was issued). As such, Patentees maintain that the "B delay" should include the 127 days and be increased from 495 to 622 days. Patentees conclude that the correct patent term adjustment is 1102 days (the sum of 709 days of "A delay" and 622 days of "B delay" minus 201 days overlapping delay minus 28 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(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);
(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.

The implementing regulation, 37 CFR 1.702(b) provides that:

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:
(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.

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 495 days based on the application's commencement date being March 13, 2006 and the patent not having issued as of the day after the three year date, March 14, 2009, and a request for continued examination under 132(b) having been filed on July 22, 2010. In other words, the 127 day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered 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. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

period of adjustment 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 number of days 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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides

for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "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," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (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), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138

(D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "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." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-

[2] Clause (iii) provides for not including (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. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "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" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such

information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

---

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on July 22, 2010, and the patent issued by virtue of that request on December 6, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on August 2, 2011 and ending on December 6, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 975 days indicated on the patent is correct.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,511	01/08/2007	Toshio Doi	3749-0124PUS1	8941

2292 7590 12/06/2010
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
KEMMERER, ELIZABETH

ART UNIT	PAPER NUMBER
1646	

NOTIFICATION DATE	DELIVERY MODE
12/06/2010	ELECTRONIC

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

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

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

mailroom@bskb.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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December 2, 2010

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Toshio Doi; et al	:	**DECISION ON PETITION**
Application No. 10571511	:	
Filed: 03/10/2006	:	
Attorney Docket No. **3749-0124PUS1**	:	

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) March 10, 2006.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☑* 3 ☐

* The three sets of color drawings contained non-English language as noted in the attached Identification of Drawing Deficiencies.

A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Kimberly Terrell/
Manager
Office of Data Management
Publications Branch

Application No. 10571511 **Drawings filed** 03/10/06

IDENTIFICATION OF DRAWING DEFICIENCIES

☐ There is a hole or the image thereof within the illustration. FIG(s)_____

☐ The illustration is penetrated or traversed by a solid or broken line that is not intended to be part of the drawing, such as a dark line caused by a flaw in the copying process. FIG(s)_____

☐ An ink stamp or the image thereof obscures part of the illustration. FIG(s)_____

☐ The drawing is marred by black smudges, obliterations, or fax/copier marks (for example, speckles or dots in a substantial portion of the drawing). FIG(s)_____

☐ Figure numbers are duplicated or missing. FIG(s) _____

☐ Drawing sheet or figure is missing. FIG(s)_____

☐ Numbers, letters, or reference characters in the drawing have been crossed out or are illegibly handwritten. FIG(s)_____

☐ The character of the lines, numbers, and letters is poor. FIG(s)_____

☐ The drawing's background shows that the original drawing was made on graph paper or other paper with a pattern or decoration.

☐ The FIG. number label is placed in a location that causes the drawing to be read upside down. FIG(s)_____

☐ Data, a reference number, or part of the drawing is truncated or missing, or a lead line has no reference number. FIG(s)_____

☐ The drawing is continued onto a second page (or more) without proper labeling under 37 CFR 1.84(u)(1). FIG(s)_____

☒ The drawing and/or the FIG. label contain(s) foreign language. All Figure Labels AND foreign language in Figures 5, 6, 8, 16, 17, 18, and 19.

☐ A petition under 37 CFR 1.84(a)(2) to accept color drawings has been granted, but the brief description of the drawings in the specification does not contain (or has not been amended to contain) the paragraph required by 37 CFR 1.84(a)(2)(iv).

☐ OTHER:

☐ COMMENTS:

Patent Publication Branch
RSQ 9D33

Office of Data Management

Fax

To:	Linda Parker	**From:**	Kimberly Terrell
Fax:	703-205-8050	**Pages:**	21 including cover
Phone:		**Date:**	12/2/10
Re:	10571511 - drawings	**CC:**	n/a

☐ **Urgent** ☑ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

Ms. Parker,

The scanner is not functioning properly, so I am sending the attached via fax.

Please note that I have included figure 5 now as well as I just noticed it also contains foreign language.

Attached is a black and white version of the color drawings in this application. I will be sending you a petition decision dismissing the petition to accept color drawings. You will have two months to send in a renewed petition with corrected color drawings. If you choose not to respond, the patent will issue with the black and white drawings. If you determine prior to the 2 month period that you prefer the black and white drawings, you may respond to communicate that in writing.

If you have any further questions, please feel free to contact me at 703-756-1568,

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,511	01/08/2007	Toshio Doi	3749-0124PUS1	8941

7590 01/27/2011
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
KEMMERER, ELIZABETH

ART UNIT	PAPER NUMBER
1646	

NOTIFICATION DATE	DELIVERY MODE
01/27/2011	ELECTRONIC

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

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

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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January 25, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Toshio Doi, et al	:	**DECISION ON PETITION**
Application No. 10571511	:	
Filed: 01/08/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **3749-0124PUS1**	:	***DRAWINGS***

This is a decision on the Renewed Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) January 11, 2011.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings.

   "The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

Kimberly Terrell, Manager
Office of Data Management
Publications Branch

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MCCORMICK, PAULDING & HUBER LLP
CITY PLACE II
185 ASYLUM STREET
HARTFORD CT 06103

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Yajima	:	
Application No. 10/571,550	:	ON APPLICATION FOR
Filed: March 10, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. 4724-0035WOUS	:	

This is in response to the REQUEST MADE UNDER 37 CFR 1.705(b) FOR REVISION OF PATENT TERM ADJUSTMENT, filed July 2, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand forty-one (1041) days, not seven hundred forty-nine (749) 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 he may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months

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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).

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

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OCT 04 2011
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BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

In re Application of	:	
Bernard Pieter Wijnberg	:	
Application No. 10/571,593	:	DECISION ON PETITION
Filed: July 26, 2006	:	
Attorney Docket No. 1032364-000019	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 29, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 29, 2010, 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 December 30, 2010.

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 $1860, and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1270 extension of time fee submitted with the petition on September 29, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1773 for appropriate action by the Examiner in the normal course of business on the reply received September 29, 2011.

April M. Wise
Petitions Examiner
Office of Petitions

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Staas & Halsey
1201 New York Avenue, N.W.
7th Floor
Washington, D.C. 20005

MAILED
SEP 23 2011
PCT LEGAL ADMINISTRATION

In re Application of:
EISL et al.
U.S. Application No.: 10/571,672
PCT No.: PCT/EP04/51826
International Filing Date: 18 August 2004
Priority Date: 12 September 2003
Attorney's Docket No.: 1454.1688
For: REACHABILITY MAINTENANCE OF A MOVING NETWORK BASED ON TEMPORARY NAME IDENTIFIERS

DECISION ON PETITION
UNDER
37 CFR 1.137(b)
and
37 CFR 1.182

This decision is issued in response to applicants' (renewed) "Petition under 37 CFR 1.137(b) for Revival of an Application for Patent Abandoned Unintentionally and under 37 CFR 1.182 to Accept Declaration" filed 25 February 2011.

BACKGROUND

The procedural background for the present application was set forth in the Decision mailed 03 December 2007. In that decision, the application was held abandoned for failure to file a proper response to the "Notification Of Defective Response" (Form PCT/DO/EO/916) mailed 21 May 2007. Specifically, the Office found that the declaration filed by applicants in response to the Notification Of Defective Response was defective because it appeared to be an impermissible compilation of multiple documents.

On 26 June 2008, applicants filed the "Petition Under 37 CFR 1.137(b) To Revive An Unintentionally Abandoned Application." Submitted with the petition, applicants included: a declaration executed by Jochen Eisl, Louise Krug, and Eleanor Hepworth; an Explanation of Reason for Delay; and a Supplemental Declaration of Louise Krug. In a decision dated 23 September 2008, applicants' petitions were dismissed without prejudice.

On 29 January 2009, applicants filed a petition under 37 CFR 1.137(b) and 37 CFR 1.182. In a decision dated 17 April 2009, applicants' petitions were dismissed without prejudice.

On 10 December 2010, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that

the application was abandoned for failure to file a response to the Decision on Petition mailed 10 December 2010 within the time period set therein.

On 25 February 2011, applicants filed a petition under 37 CFR 1.137(b) and 37 CFR 1.182.

DISCUSSION

Petition under 37 CFR 1.137(b)

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Items (2)-(4) have been satisfied. Under the present circumstances, in order for the response requirement, item (1) above, to be satisfied, the petition to change inventor's name under 37 CFR 1.182 must be grantable.

Petition under 37 CFR 1.182

Section 1893.01(e) of the Manual Of Patent Examining Procedure ("MPEP") states the following:

> Where ... the name of an inventor indicated in the international application during the international phase has changed such that the inventor's name is different from the corresponding name indicated in an oath or declaration submitted under 37 CFR 1.497, for example, on account of marriage, then a petition under 37 CFR 1.182 will be required to accept the oath or declaration with the changed name. See MPEP § 605.04(c).

Applicants are requesting to change the name of the second inventor from Louise Farr to Louise Krug. Accordingly, the present submission has been treated as a petition under 37 CFR 1.182 to correct the name of the second inventor. For such a petition to be grantable, MPEP § 605.04(c) states that "the petition must include an appropriate petition fee and an affidavit signed with both names and setting forth the procedure whereby the change of name was effected, or a certified copy of the court order."

Here, applicants' have submitted the required petition fee. As for the affidavit requirement or copy of the court order, applicants have submitted an affidavit regarding the name change. This affidavit states that the inventor's surname was changed, and that his/her name was legally changed to Louise KRUG as a result of marriage. Hence, the

declaration (affidavit) supplied satisfies the requirements for a grantable petition. Therefore, item (1) has been satisfied.

CONCLUSION

Applicants' renewed petition for revival under 37 CFR 1.137(b) is **GRANTED**.

Applicants' petitions under 37 CFR 1.182 to correct the name of record for the second is **GRANTED**.

This application is being returned to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 26 June 2008.

Anthony Smith
Attorney-Advisor
Office PCT Legal Administration
Tel.: 571-272-3298
Facsimile: 571-273-0459

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MAILED
JUN 15 2011
OFFICE OF PETITIONS

Davidson, Davidson & Kappel, LLC
485 7th Avenue
14th Floor
New York NY 10018

In re Patent No. 7,810,494	:	
Issue Date: October 12, 2010	:	
Application No. 10/571,725	:	DECISION ON PETITION
Filed: May 31, 2006	:	
Attorney Docket No. 478.1079	:	

This is a decision on the Certificate Of Correction (PTO/SB/44), filed September 22, 2010, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to correct assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44).

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,810,494.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Dickinson Wright PLLC
James E. Ledbetter, Esq.
International Square
1875 Eye Street, N.W., Suite 1200
Washington DC 20006

MAILED

OCT 18 2010

OFFICE OF PETITIONS

In re Application of :
Masahiro OSHIKIRI :
Application No. 10/571,761 :
Filed: April 7, 2006 :
Attorney Docket No. L9289.06121 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 17, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed January 27, 2010, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on April 28, 2010.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee; (2) the petition fee of $1620; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

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

The application file is being referred to the Office of Data Management.

David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 07/05/11

TO SPE OF : ART UNIT 2815

SUBJECT : Request for Certificate of Correction for Appl. No.: 10571891 Patent No.: 7732808

CofC mailroom date: 9/8/2010

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
[redacted]

Certificates of Correction Branch
571-272-3421

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 RESPONSE FOR CERTIFICATE OF CORRECTION

/Kenneth Parker/ 7/5/2011

SPE : Kenneth Parker Art Unit: 2815

UNITED STATES PATENT AND TRADEMARK OFFICE

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

VIDAS, ARRETT & STEINKRAUS, P.A.
Richard A. Arrett
SUITE 400, 6640 SHADY OAK ROAD
6640 Shady Oak Rd.
EDEN PRAIRIE MN 55344

MAILED
FEB 14 2012
OFFICE OF PETITIONS

In re Application of	:	
Alex Obach et al.	:	
Application No. 10/571,965	:	NOTICE
Filed: April 13, 2006	:	
Attorney Docket No. **H82.2-13103-US01**	:	

This is a notice regarding your request filed January 6, 2012, 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**.

There is no indication that the person signing the petition/request was ever given a power of attorney to prosecute the application. However, in accordance with 37 CFR 1.34, the signature of Steven M. duBois appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Steven M. duBois desires to be acknowledged as the attorney of record the appropriate power of attorney document must be submitted.

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
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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MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN TX 78767-0398

MAILED
JUN 23 2011
OFFICE OF PETITIONS

In re Application of :
Axel Choides et al. :
Application No. 10/572,043 : DECISION ON PETITION
Filed: December 12, 2006 :
Attorney Docket No. 6333-02000 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, August 3, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 4, 2010. A Notice of Abandonment was mailed on March 29, 2011.

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.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

This application is being referred to Technology Center AU 1624 for appropriate action by the Examiner in the normal course of business on the reply received June 8, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHRISTOPHER PAUL MITCHELL
888 16TH ST., NW
SUITE 800
WASHINGTON DC 20006

RECEIVED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of	:	
Sang-Gon KIM	:	
Application No. 11/572,100	:	ON PETITION
Filed: January 12, 2007	:	
Attorney Docket No. ABN2088-036	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 3, 2010, 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, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned April 24, 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); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Receipt of the revocation and power of attorney and change of correspondence address filed May 3, 2010 is acknowledged and made of record.

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 May 3, 2010 was submitted subsequent to the maximum extendable period for reply, this fee is unnecessary and is being refunded.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3219.

Technology Center AU 3749 has been advised of this decision. The application is, thereby, referred to Technology Center AU 3749 for consideration by the examiner of the amendment filed on petition filed May 3, 2010.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

United States Patent and Trademark Office

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

MAILED

FEB 25 2011

PCT LEGAL ADMINISTRATION

In re Application of	:	
Dammers et al.	:	
Application No.: 10/572,166	:	
PCT No.: PCT/EP2004/010454	:	
Int. Filing Date: 13 September 2004	:	DECISION
Priority Date: 15 September 2003	:	
Attorney Docket No.: 40149/01301	:	
For: Housing Element And Closing Element	:	
Provided With Rollover Resistance	:	

This is with regard to the petition to withdraw the holding of abandonment, filed on 09 December 2010.

BACKGROUND

This international application was filed on 13 September 2004, designated the United States, and claimed an earliest priority date of 15 September 2003. The International Bureau transmitted a copy of the published international application to the USPTO on 24 March 2005. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 15 March 2006. Applicants timely filed *inter alia* the basic national fee.

On 25 October 2006, a Notification Of Missing Requirements (Form PCT/DO/EO/905) was mailed to counsel, requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b).

On 06 November 2006, applicants filed a response, including a declaration.

On 30 April 2007, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed, indicating the declaration to be defective because it "includes Erwin Kaspar who is not listed in the international application."

On 01 December 2010, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Form PCT/DO/EO/905 mailed on 25 October 2006.

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment, in view of the circumstance that "the required reply was timely filed." On 06 November 2006, applicants filed a response to the Form PCT/DO/EO/905 mailed on 25 October 2006, but that reply was found to be defective, as indicated by the Form PCT/DO/EO/916 mailed on 30 April 2007. Petitioner acknowledges the mailing of Form PCT/DO/EO/916 on 30 April 2007, but does not allege that a response thereto was timely filed. A review of the application file reveals that no response

thereto was timely received by the USPTO. The instant petition is accompanied by, *inter alia*, what appears to be a copy of a 12-sheet facsimile transmission dated 30 May 2007, but petitioner has neither specifically referenced this paper nor advanced a theory for relief based upon it. Accordingly, it would not be appropriate to grant the requested relief on the basis of the present record. This international application stands abandoned with respect to the national stage in the United States for failure to timely respond to the requirements of Forms PCT/DO/EO/905 and PCT/DO/EO/916.

DECISION

The petition is **DISMISSED**, without prejudice.

Any request for reconsideration must be filed within **TWO (2) MONTHS** from the mailing date of this Decision, extendable under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459

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

MAILED
DEC 08 2011
PCT LEGAL ADMINISTRATION

In re Application of
Dammers et al.
Application No.: 10/572,166
PCT No.: PCT/EP2004/010454
Int. Filing Date: 13 September 2004
Priority Date:15 September 2003
Attorney Docket No.: 40149/01301
For: Housing Element And Closing Element Provided With Rollover Resistance

DECISION

This is with regard to the renewed petition to withdraw the holding of abandonment, filed on 20 April 2011. The petition also entails consideration of a submission under 37 CFR 1.497(d).

DISCUSSION

Petition to Withdraw Holding of Abandonment

In a Decision mailed on 25 February 2011, the petition filed on 09 December 2010 was dismissed, without prejudice, because

> Petitioner requests withdrawal of the holding of abandonment, in view of the circumstance that "the required reply was timely filed." On 06 November 2006, applicants filed a response to the Form PCT/DO/EO/905 mailed on 25 October 2006, but that reply was found to be defective, as indicated by the Form PCT/DO/EO/916 mailed on 30 April 2007. Petitioner acknowledges the mailing of Form PCT/DO/EO/916 on 30 April 2007, but does not allege that a response thereto was timely filed. A review of the application file reveals that no response thereto was timely received by the USPTO. The instant petition is accompanied by, *inter alia*, what appears to be a copy of a 12-sheet facsimile transmission dated 30 May 2007, but petitioner has neither specifically referenced this paper nor advanced a theory for relief based upon it. Accordingly, it would not be appropriate to grant the requested relief on the basis of the present record. This international application stands abandoned with respect to the national stage in the United States for failure to timely respond to the requirements of Forms PCT/DO/EO/905 and PCT/DO/EO/916.

In response, counsel now states that a reply was filed via facsimile transmission on 30 May 2007, and that "A copy of the faxed Response and the Transmission Report are enclosed herewith." 37 CFR 1.8(b) provides that

> 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 or

decided with prejudice, or the prosecution of a reexamination proceeding is terminated pursuant to § 1.550(d) or § 1.957(b) or limited pursuant to § 1.957(c), or a requester paper is refused consideration pursuant to § 1.957(a), 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 that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission. 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. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

Regarding **requirement (1)**, counsel has informed the Office of the previous transmittal.

Concerning **requirement (2)**, petitioner has supplied "a copy of the faxed Response."

With respect to **requirement (3)**, petitioner states that "the undersigned attorney personally filed, via a fax, with the USPTO the Response to the Notification." Petitioner has also included a copy of the sending unit's report confirming transmission. Accordingly, it would be appropriate to regard the copy of the response included with the instant petition as a copy of the response originally filed via facsimile on 30 May 2007. Since the response was fully compliant (as discussed below), the holding of abandonment is hereby **WITHDRAWN**, and the Notification of Abandonment (Form PCT/DO/EO/909) mailed on 01 December 2010 is hereby **VACATED**.

Submission Under 37 CFR 1.497(d)

The "Response" filed on 30 May 2007 included a "Request to Correct Inventorship" which is being addressed under 37 CFR 1.497(d). A declaration filed under 37 CFR 1.497(d) must be by the actual inventor or inventors as required under 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47. The declaration must be accompanied by (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part, (2) the processing fee set forth in 37 CFR 1.17; and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (*See* 37 CFR 3.73(b)). *See* Section 201.03 of the Manual of Patent Examining Procedure (M.P.E.P.).

Regarding **requirement (1)**, applicants have provided an appropriate statement by Erwin Kaspar.

Regarding **requirement (2)**, the required $130.00 processing fee is being charged to counsel's Deposit Account No. 50-1492, as authorized by Atty. Kaplan.

Regarding **requirement (3)**, applicants have provided acceptable written statements of consent from both assignees. As such, it would be appropriate to accept the declaration filed on 06 November 2006 under 37 CFR 1.497(d).

DECISION

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

The declaration is **ACCEPTED** under 37 CFR 1.497(d).

This application is being returned to the Office of Patent Application Processing for further processing consonant with this Decision, including the correction of PALM records to show the status of the application as pending (not abandoned). The date of the application under 35 U.S.C. 371(c)(1), (2) and (4) is **06 November 2006**.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
SEP 23 2011
OFFICE OF PETITIONS

Paper No.

MDIP LLC
POST OFFICE BOX 2630
MONTGOMERY VILLAGE MD 20886-2630

In re Application of Klussmann et al. Application No. 10/572,291 Filed: February 23, 2007 Attorney Docket No. 021315-08310200 Title: METHOD FOR THE SYNTHESIZING NUCLEIC ACIDS, AND APPLICATION THEREOF	DECISION ON PETITION UNDER 37 C.F.R. § 1.137(B)

This is a decision on the petition filed August 25, 2011, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

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

The above-identified application became abandoned for failure to submit an Appeal Brief within two-months of the filing of a Notice of Appeal, filed on March 15, 2010. A five-month extension of time pursuant to 37 C.F.R. § 1.136(a) was received on October 15, 2010 along with an after-final amendment which failed to place the application in condition for allowance.[1] Accordingly, the above-identified application became abandoned on October 16, 2010. A Notice of Abandonment was mailed on October 25, 2010.

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;

1 See page 2 of the notice of abandonment.

(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner filed the petition fee, the proper statement of unintentional delay, and both a Request for Continued Examination (RCE) and the associated fee. The RCE and the previously submitted after-final amendment of October 15, 2010 have been accepted as the required reply under 37 C.F.R. § 1.137(b)(1). As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[2]

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 submission under 37 C.F.R. § 1.114 - the amendment submitted on October 15, 2010 - can be processed in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[3] All other inquiries

2 See Rule 1.137(d).
3 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JAN 05 2011

PCT LEGAL ADMINISTRATION

DAVIDSON BERQUIST JACKSON & GOWDEY LLP
4300 WILSON BLVD., 7TH FLOOR
ARLINGTON VA 22203

In re Application of	:	
SZARO et al.	:	
Application No.: 10/572,359	:	DECISION
PCT No.: PCT/US2005/036533	:	
Int. Filing Date: 14 October 2005	:	
Priority Date: 14 October 2004	:	
Attorney Docket No.: 2786-0002	:	
For: POP-UP SPORTS TRAINING ASSEMBLIES	:	
& RELATED DEVICES AND METHODS	:	

This decision is in response to applicant's petition under 37 CFR 1.137(b) filed 20 October 2010 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 14 October 2005, applicant filed international application PCT/US2005/036533 which designated the U.S. and claimed a priority date of 14 October 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 27 April 2006. The thirty-month period for paying the basic national fee in the United States expired at midnight on 16 April 2007 (14 April 2007 being a Saturday).

On 16 March 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the U.S. Basic National Fee and a declaration of the inventors.

On 07 July 2008, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Insufficient Fees (Form PCT/DO/EO/923) indicating, *inter alia*, that additional fees of $1,140 were required. The Notification set a two-month extendable time period.

On 11 June 2009, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America for failure to respond to the Notification mailed 07 July 2008.

On 20 October 2010, applicant filed the instant petition under 37 CFR 1.137(b).

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

(1) The required reply;
(2) The petition fee;
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), authorization to charge the additional fees to Deposit Account 50-1860 was provided on 20 October 2010. (Search fee–$50; Exam fee–$110, Surcharge–$65, and claims in excess of 20–$364).

As to item (2), applicant submitted the petition fee on 20 October 2010.

As to item (3), the required statement has been provided.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

Declaration of Inventors

The declaration of inventors filed 16 March 2006 is in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3301

UNITED STATES PATENT AND TRADEMARK OFFICE

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NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON DC 20004-2128

MAILED

NOV 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Plettner et al.	:	DECISION ON PETITION
Application No. 10/572,380	:	TO WITHDRAW
Filed: January 19, 2007	:	FROM RECORD
Attorney Docket No. 741439-33	:	

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 26, 2010.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

As there is no Statement under 37 CFR 3.73(b) in the instant application, the request cannot be granted. All future communications from the Office will be directed to above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address have been submitted.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED
AUG 01 2011
OFFICE OF PETITIONS

In re Application	:
Wakita, et al.	:
Application No. 10/572,476	: DECISION ON APPLICATION
Filed: March 17, 2006	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 1254-0310PUS1	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)" filed July 6, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred fifty-eight (558) days to one thousand twenty-six (1026) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand twenty-six (1026) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 8, 2011, 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 five hundred fifty-eight (558) days. On July 6, 2011, Applicants timely[1] submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one thousand twenty-six (1026) days.

---

[1] Applicants filed the application for patent term adjustment together with the issue fee.

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

Applicants assert entitlement to a patent term adjustment of 1026 days on the basis that date of completion of all 35 USC 371 requirements was March 17, 2006, not June 27, 2007.

A review of the file reveals that Applicants are correct - 35 USC 371 requirements were completed on March 17, 2006. Pursuant to 37 C.F.R. § 1.702(a)(1), the Office had until May 17, 2007 to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. The Office mailed an Office action on April 13, 2010. Accordingly, under 37 C.F.R. § 1.703(a)(1), PTO delay of 1062 days should have been assessed, not 594 days as reflected in PAIR.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one thousand twenty-six (1026) days** (1062 days of PTO delay reduced by 36 (30+6) days of applicant delay).

Receipt of the $200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: [ ] Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10572476

Application Filing Date	03/17/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	594
A Delays	594	PTO Manual Adjustment	468
B Delays	0	Applicant Delay (APPL)	36
C Delays	0	Total PTA (days)	1026

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
116	07/22/2011		P028	Adjustment of PTA Calculation by PTO	468		0
105	04/08/2011		MN/=.	Mail Notice of Allowance			0
100	04/06/2011		IREV	Issue Revision Completed			0
99	04/06/2011		DVER	Document Verification			0
98	04/06/2011		N/=.	Notice of Allowance Data Verification Completed			0
97	04/06/2011		DOCK	Case Docketed to Examiner in GAU			0
104	03/31/2011		OAR	Office Action Review			0
103	03/31/2011		OAR	Office Action Review			0
102	03/31/2011		OAR	Office Action Review			0
101	03/31/2011		OAR	Office Action Review			0
96	03/31/2011		EX.R	Reasons for Allowance			0
95	03/31/2011		EX.A	Examiner's Amendment Communication			0
94	03/31/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
93	03/31/2011		CNTA	Allowability Notice			0
92	03/31/2011		CRFF	Error(s) in CRF Corrected by STIC			0
89	03/30/2011		FWDX	Date Forwarded to Examiner			0
88	03/29/2011		A.NE	Amendment after Final Rejection			0
87	03/15/2011		EML_NTR	Email Notification			0
86	03/15/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
85	03/09/2011		OAR	Office Action Review			0
84	03/09/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
83	12/29/2010		ELC_RVW	Electronic Review			0
82	12/29/2010		EML_NTF	Email Notification			0
81	12/29/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
80	12/20/2010		CTFR	Final Rejection			0
79	10/19/2010		FWDX	Date Forwarded to Examiner			0
78	10/07/2010	10/01/2010	SA..	Supplemental Response		6	76
77	10/05/2010		FWDX	Date Forwarded to Examiner			0
76	10/01/2010	09/01/2010	A...	Response after Non-Final Action		30	53
75	10/01/2010		XT/G	Request for Extension of Time - Granted			0
74	09/23/2010		EML_NTR	Email Notification			0
73	09/23/2010		FLRCPT.C	Filing Receipt - Corrected			0
70	09/22/2010		MPEN	Mail Pre-Exam Notice			0
69	09/22/2010		M903	Notice of DO/EO Acceptance Mailed			0
68	09/22/2010		FLRCPT.O	Filing Receipt			0
71	09/21/2010		WROIPE	Application Return from OIPE			0
65	09/21/2010		ROIPE	Application Return TO OIPE			0
64	09/13/2010		EML_NTR	Email Notification			0
63	09/13/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
62	09/08/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
61	08/30/2010		INHY	case Inherited			0
60	08/30/2010		DOCK	Case Docketed to Examiner in GAU			0
59	08/03/2010		LET.	Miscellaneous Incoming Letter			0
58	07/01/2010		EML_NTR	Email Notification			0
57	07/01/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
56	06/25/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
55	06/01/2010		ELC_RVW	Electronic Review			0
54	06/01/2010		EML_NTF	Email Notification			0
53	06/01/2010		MCTNF	Mail Non-Final Rejection			0
52	05/26/2010		CTNF	Non-Final Rejection			0
48	05/18/2010		FWDX	Date Forwarded to Examiner			0
47	05/13/2010		ELC.	Response to Election / Restriction Filed			0
46	04/13/2010		ELC_RVW	Electronic Review			0
45	04/13/2010		EML_NTF	Email Notification			0
44	04/13/2010	08/27/2008	MCTRS	Mail Restriction Requirement	594		72
43	04/09/2010		CTRS	Restriction/Election Requirement			0
42	03/30/2010		DOCK	Case Docketed to Examiner in GAU			0
41	02/09/2010		A.PE	Preliminary Amendment			0
40	01/22/2010		DOCK	Case Docketed to Examiner in GAU			0
39	10/29/2009		CLSS	CASE CLASSIFIED BY OIPE			0
38	08/28/2009		TI1050	Transfer Inquiry to GAU			0
37	04/27/2009		EML_NTR	Email Notification			0
36	04/27/2009		FLRCPT.C	Filing Receipt - Corrected			0
34	03/14/2009		EML_NTR	Email Notification			0
33	03/13/2009		MPTGR	Mail-Petition Decision - Granted			0
32	03/12/2009		PTGR	Petition Decision - Granted			0

49	03/01/2009	IDSC	Information Disclosure Statement considered	0
35	03/01/2009	M844	Information Disclosure Statement (IDS) Filed	0
31	03/01/2009	WIDS	Information Disclosure Statement (IDS) Filed	0
30	02/06/2009	EML_NTR	Email Notification	0
29	02/05/2009	PG-ISSUE	PG-Pub Issue Notification	0
28	02/02/2009	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
18	11/11/2008	OIPE	Application Dispatched from OIPE	0
66	10/28/2008	W/OA	Pre-Exam Office Action Withdrawn	0
17	10/28/2008	EML_NTR	Email Notification	0
16	10/28/2008	EML_NTR	Email Notification	0
13	10/28/2008	FLRCPT.O	Filing Receipt	0
12	10/28/2008	M903	Notice of DO/EO Acceptance Mailed	0
14	10/27/2008	PGPC	Sent to Classification Contractor	0
5	08/18/2008	CRFF	Error(s) in CRF Corrected by STIC	0
21	07/10/2008	PET.	Petition Entered	0
11	07/10/2008	ADDFLFEE	Additional Application Filing Fees	0
10	07/10/2008	SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	0
9	07/10/2008	CRFL	CRF Disk Has Been Received by Preexam / Group / PCT	0
72	06/27/2007	371COMP	371 Completion Date	0
0.5	09/16/2004	NEFILE	International Filing date	0

Export to: Excel

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09-20-11

TO SPE OF : ART UNIT 3727

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/572607 Patent No.: 7942392

CofC mailroom date: 06-16-11

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

Note:

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

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

Comments: These changes have been approved by the Primary examiner Lee D Wilson.

/LEE D WILSON/
Primary Examiner, Art Unit 3727

Monica S. Carter
MONICA CARTER
SUPERVISORY PATENT EXAMINER

SPE **Art Unit** 3727

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 1-19-12

TO SPE OF : ART UNIT 3737

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/572607 Patent No.: 7942392

CofC mailroom date: 06-16-11

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

Note: _____

Angela Green 571.272.9005

CofC Branch 703-756-1814

Thank You For Your Assistance

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

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

Comments: THE CLAIMS FILED IN THE NOTICE OF ALLOWANCE 3/21/2011. MAKE THE SAME EXACT CHANGES MADE IN THE EXAMINER'S AMENDMENT.THEREFORE THE SAME CHANGES ARE ALREADY MADE IN THE EXAMINER'S AMENDMENT FILED ON 3/21/12. THE OTHER CHANGES SHOULD BE MADE ALSO THAT ARE NOT DEALING WITH THE CLAIMS BUT OTHER SUBJECT MATTER. A COPY OF THE CORRECT CLAIMS WILL BE ATTACHED FOR CONVIENCE. /LEE D WILSON/ PRIMARY 3727

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR NY 10510

MAILED
MAY 18 2011
OFFICE OF PETITIONS

In re Application of :
Francesco Pessolano, et al. :
Application No. 10/572,620 : ON PETITION
Filed: March 17, 2006 :
Attorney Docket No. NL 031154 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 11, 2011, to revive 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. 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. All future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

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 application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, August 6, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 7, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

In view of the above the petition is **GRANTED**.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 13/084,423

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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MAILED

MAR 29 2011

PCT LEGAL ADMINISTRATION

WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re Application of	:	
RUFO, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/572,667	:	
PCT No.: PCT/US2004/030813	:	UNDER 37 CFR 1.78(a)(6)
Int. Filing Date: 20 September 2004	:	
Priority Date: 18 September 2003	:	
Atty Docket No.: C0875.70019US02	:	
For: TREATMENT OF SEVERE DISTAL COLITIS	:	

This is a decision on the petition under 37 CFR §1.78(a)(6), filed 29 September 2010, 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 and supplemental application data sheet (ADS).

The petition is **DISMISSED AS MOOT**.

MPEP 201.11, Section V, states in relevant part,

> If an applicant includes a claim to the benefit of a prior application elsewhere in the application but not in the manner specified in 37 CFR 1.78(a)(2)(i) and (a)(2)(iii) or 37 CFR 1.78(a)(5)(i) and (a)(5)(iii) (e.g., if the benefit claim is included in an unexecuted oath or declaration or the application transmittal letter) within the time period set forth in 37 CFR 1.78(a)(2)(ii) or (a)(5)(ii), the Office will not require a petition and the surcharge under 37 CFR 1.17(t) to correct the benefit claim if the information concerning the benefit claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt. This is because the application will have been scheduled for publication on the basis of such information concerning the benefit claim.

In the present case, applicant included a benefit claim to the prior provisional application in the international application but not in the manner specified in 37 CFR 1.78(a)(5)(iii). Because the claim appeared on the initial filing receipt, a petition under 37 CFR 1.78(a)(6) is not required.

In view of the above, the $1410.00 petition fee submitted is unnecessary and will be refunded to petitioner in due course.

Applicant is advised that a benefit claim must still be submitted in the manner specified in 37 CFR 1.78(a)(5)(i) and (a)(5)(iii) (i.e., by an amendment in the first sentence(s) of the specification or in an ADS) to have a proper claim under 35 U.S.C. 119(e) and 37 CFR 1.78 to the benefit of the prior application. See MPEP 201.11, Section V. In the present case, a proper benefit claim has not been submitted. Specifically, the supplemental application data sheet lacks

the signature required under 37 CFR 1.33(b) and 10.18. A signature on an accompanying cover letter is insufficient. Applicant may wish to refer to the most recent version of Form PTO/SB/14 (http://www.uspto.gov/ebc/portal/efs/sb0014_fill.pdf) which contains an appropriate signature block. Additionally, the proposed amendment to the first paragraph of the specification is improper because it incorporates by reference an application which was not incorporated on filing.

Any questions concerning this decision on petition may be directed to Derek A. Putonen at (571) 272-3294. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to the Examiner of Technology Center AU 1628 for examination.

BLin

Bryan Lin
PCT Legal Examiner
Office of PCT 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
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10 SEP 2010

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

In re Application of	:
HOFMEISTER, Robert, et al.	:
Application No. 10/572,740	:DECISION ON PETITION
Filed: 15 October 2004	:
Attorney Docket No. 028622-0148	:

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed 18 May 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a) to European application no. 03023581.6.

The petition is **DISMISSED AS MOOT**.

The petition procedure under 37 CFR 37 CFR § 1.78(a)(3) is only applicable to domestic benefit claims; it is not applicable to foreign priority claims. Foreign priority in a U.S. national phase application is governed by 35 U.S.C. 365(b) and 37 CFR 1.55. In the present case, foreign priority to EP 03023581.6. was timely claimed in the international phase, as evident by its inclusion on the front page of the published international application.

It is noted that U.S. regulations require that the foreign priority claim be listed on either the oath/declaration or application data sheet (ADS). See 37 CFR 1.63(c). While the petition was accompanied by a supplemental ADS claiming priority of the European patent application, the ADS was not signed in accordance with 37 CFR 1.33. Nor does the declaration include the priority claim. Applicant is advised to correct this matter.

Any questions concerning this decision on petition may be directed to Erin Thomson at (571) 272-3292. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The $1410 petition fee will be refunded to petitioner's deposit account in due course.

/Boris Milef/

Boris Milef
PCT Legal Examiner
PCT LegalAdministration

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,776	03/21/2006	Sethumadavan Sanjay-Gopal	PHUS030363US	3412

7590 06/03/2011
Thomas E Kennedy Jr
Faye Sharpe Fagan Minnich & McKee
1100 Superior Avenue
Seventh floor
Cleveland, OH 44114

EXAMINER
ROY, BAISAKHI

ART UNIT	PAPER NUMBER
3777	

MAIL DATE	DELIVERY MODE
06/03/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Thomas E Kennedy Jr
Faye Sharpe Fagan Minnich & McKee
1100 Superior Avenue
Seventh floor
Cleveland OH 44114

In re Application of:
SANJAY-GOPAL, SETHUMADAVAN et al
Serial No. 10/572,776
Filed: March 21, 2006
Docket: PHUS030363US

Title: ENABLEMENT OF QUICK REMOTE ACCESS TO CT SCANS TO IMPROVE WORKFLOW AND PATIENT THROUGHPUT

DECISION ON PETITION
UNDER 37 CFR § 1.181

This is a decision on the petition filed on February 7, 2010 by which petitioner requests reconsideration and withdrawal of the restriction requirement mailed December 7, 2011, and that non-elected claims 15-21 be rejoined and examined on the merits. Claims 1-10 and 22 were held to be constructively elected examined and newly amended dependent claims 15-21 were withdrawn from consideration due to non-elected invention. This petition is being considered pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is granted.

After consulting with the supervisor, the requested relief is granted. The restriction requirement mailed on December 7, 2010 is hereby withdrawn. Claims 15-21 will be rejoined with the elected invention. The examiner will issue an Office action to rejoin and treat the newly amended non-elected claims 15-21 on the merits when considering the Rule 116 Amendment of February 7, 2011 in due course. The finality of the rejection of December 7, 2010 will be withdrawn.

The application is being forwarded to the examiner via Supervisory Patent Examiner of Art Unit 3777 for further consideration of non-elected claims 15-21 and the Rule 116 Amendment prior to further appeal proceeding. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

Petition is **granted**.

Angie D. Sykes, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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ARIZONA CHEMICAL COMPANY, LLC
ATTN: INTELLECTUAL PROPERTY DEPARMENT (LEGAL)
P.O. BOX 550850
JACKSONVILLE FL 32255

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Lloyd A. Nelson et al.	:	
Application No. 10/572,994	:	ON PETITION
Filed: November 8, 2006	:	
Attorney Docket No: ARZ-024630-WO	:	

This is a decision on the petition filed November 18, 2010 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed March 18, 2010. A shortened statutory period of three months was set for replying to the non-Final Office Action. No response having been timely filed, this application became abandoned June 21, 2010. Accordingly, a Notice of Abandonment was mailed October 27, 2010.

The record reveals that a three month extension of time was filed with the instant petition, however, 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 $1110.00 extension of time fee submitted with the petition on November 18, 2010, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be refunded back to the credit card provided.

---

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

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

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

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

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

This matter is being referred to Technology Center 1771 for appropriate action on the amendment filed November 18, 2010.

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

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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24 SEP 2010

SMITH, GAMBRELL & RUSSELL
1130 CONNECTICUT AVENUE, N.W., SUITE 1130
WASHINGTON, DC 20036

In re Application of SHIMIZU et al	:	
U.S. Application No.: 10/573,048	:	
PCT Application No.: PCT/JP2004/013922	:	DECISION
Int. Filing Date: 24 September 2004	:	
Priority Date Claimed: 24 September 2003	:	
Attorney Docket No.: 33082M309	:	
For: HEAT TREATMENT APPARATUS	:	

This is in response to applicant's correspondence filed 14 August 2008, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. No petition fee is due.

BACKGROUND

On 24 September 2004, applicant filed international application PCT/JP2004/013922, which claimed priority of an earlier Japan application filed 24 September 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 31 March 2005. The thirty-month period for paying the basic national fee in the United States expired on 24 March 2006.

On 22 March 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 08 November 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 and an English translation of the international application must be filed.

On 04 May 2007, applicant filed an executed declaration and an English translation of the international application.

On 24 June 2008, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which stated that the application is abandoned for failure to timely respond to the Notification of Missing Requirements.

On 14 August 2008, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

A review of the application file reveals that the 04 May 2007 submission was accompanied by a proper request for a four month extension of time. Therefore, the submission was filed within the time period set by the Notification of Missing Requirements.

CONCLUSION

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

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 24 June 2008 is hereby VACATED.

The application has an International Filing Date under 35 U.S.C. 363 of 24 September 2004, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 04 May 2007.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Lin

Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303
Facsimile: 571-273-0459

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

Mail Date: 08/03/2010

Applicant	: Masayoshi Mototani	: DECISION ON REQUEST FOR
Patent Number	: 7644641	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/573,055	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/22/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **867** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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In re Application of
David Wilson

Application No. 10573057

Filed: May 17,2007

Attorney Docket No. 2960-97005

:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 28-OCT-2010 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

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

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

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

Decision Date : November 15,2011

In re Application of :

Ulrike Wachendorff-Neumann

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10573066

Filed : 24-Oct-2006

Attorney Docket No : 2400.0230000/RWE

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed November 15,2011 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 in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 1627 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	10573066
Filing Date	24-Oct-2006
First Named Inventor	Ulrike Wachendorff-Neumann
Art Unit	1627
Examiner Name	SARAH PIHONAK
Attorney Docket Number	2400.0230000/RWE
Title	SYNERGISTIC FUNGICIDAL ACTIVE SUBSTANCE COMBINATIONS

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

○ One or more claims are unpatentable

◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)

○ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).

RCE request,submission, and fee.

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on

☒ Are attached.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/ Robert W. Esmond /
Name	Robert W. Esmond
Registration Number	32893

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WHITE & CASE LLP
PATENT DEPARTMENT
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

MAILED
AUG 10 2010
OFFICE OF PETITIONS

Applicant: Laisheng et al.
Appl. No.: 10/573,099
International Filing Date: February 6, 2005
Title: ELECTRICAL DEPILATOR
Attorney Docket No.: 1124970-0018
Pub. No.: 2008/0195118 A1
Pub. Date: August 14, 2008

This is a decision on the request for corrected of patent application publication under 37 CFR 1.221(b), received on October 20, 2009 for the above-identified application.

The request is dismissed.

Applicant request that the application be republished because the patent application publication contains a material error wherein the incorrect specification, drawings, abstract and claims were published.

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed **within two months** from the date of the patent application publication. **This period is not extendable.**" A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. [1]

The request for corrected publication, received on October 20, 2009, was not timely filed under 37 CFR 1.221(b).

Due to the nature of the errors in this publication, the office will *sua sponte* publish a corrected patent application publication. The corrected patent application publication will be published in due course, unless the application is allowed and the patent issues before the application is republished.

[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).

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Patent No. 7,618,499 :
Issue Date: November 17, 2009 :
Application No. 10/573,148 :
Filed: December 21, 2006 :
Attorney Docket No. 53601/L471 :

NOTICE

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,176	03/23/2006	Wolfgang Staehle	MERCK3155	6633

23599 7590 09/21/2011
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

EXAMINER
OTTON, ALICIA L

ART UNIT	PAPER NUMBER
1626	

NOTIFICATION DATE	DELIVERY MODE
09/21/2011	ELECTRONIC

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

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

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

docketing@mwzb.com

United States Patent and Trademark Office

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SEP 2 1 2011

Brion P. Heaney
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of	:
Staehle et al	:Decision on Petition
Serial No.: 10/573,176	:
Filed: 23 March 2006 (national phase)	:
Attorney Docket No.: MERCK3155	:

This letter is in response to the Petition under 37 C.F.R. 1.181 filed on 9 December 2010 requesting reconsideration of the restriction requirement mailed 9 December 2008. The delay in acting up this petition is regretted.

BACKGROUND

This application was filed as a national application under 35 U.S.C. 371 and as such will be considered for unity of invention practice under Chapter 1800.

On 9 December 2008, the examiner set forth a first restriction requirement which divided claims 1-29 into four groups and required a further election of species.

On 16 January 2009, applicants elected Group I and the compound where Y is phenyl or pyridyl, and the species of example 3, with traverse.

On 2 February 2009, the examiner mailed to applicants a first non-final Office action in which the examiner indicated that the traversal was considered, and the requirement was made FINAL. The examiner withdrew claims 6 and 14-29 from consideration. Claims 1-5, 7-11 and 30-38 were objected to for reciting non-elected subject matter. Claim 1-5, 7-11 and 30-38 was rejected under 35 U.S.C. 112, first paragraph for lack of written description and for scope of enablement. Claim 1-5, 7-11 and 30-38 was rejected under 35 U.S.C. 112, second paragraph for

indefiniteness. Claims 1-7 and 30-38 were rejected under 35 U.S.C. 102(b) as being anticipated by Reckhow. Claims 1-5, 7, 9-10, 30-38 were provisionally rejected on the groups of nonstatutory double patenting over pending application 12/328,320. Claims 1-5, 7, 9-11, 30-38 were rejected on the groups of nonstatutory double patenting over 7,470,702.

On 20 July 2009, applicants filed a response to the Office action.

On 7 December 2009, the examiner mailed to applicants a final Office action in which claims 6 and 14-29 remained withdrawn from consideration. Claims 1-5, 7-11 and 30-38 were objected to for reciting non-elected subject matter. The examiner indicated that Claims 4, 7, 8, 10, 11 and 38 were objected to for being dependent upon a rejected base claim, but would not necessarily be allowable if rewritten in independent form. Claims 1-3, 5, 9, and 30-37 were rejected under 35 U.S.C. 102(b) as being anticipated by Garin et al.

A Request for Continued Examination was filed on 8 March 2010.

On 12 April 2010, the examiner mailed to applicants a non-final Office action in which claims 6 and 14-29 remained withdrawn from consideration. Claims 1-5, 7-11 and 30-38 were objected to for reciting non-elected subject matter. The examiner indicated that Claims 2, 8 and 38 were objected to for being dependent upon a rejected base claim, but would not necessarily be allowable if rewritten in independent form. Claims 1-3, 5, 9, 10 and 30-37 were rejected under 35 U.S.C. 102(b) as being anticipated by Renhowe et al. Claim 11 was rejected under 35 U.S.C. 103(a) as being unpatentable over Renhowe in view of 6,579,857.

On 12 July 2010, applicants filed a response to the Office action.

On 9 September 2010, the examiner mailed to applicants a final Office action in which claims 6 and 14-29 remained withdrawn from consideration. Claims 1, 3, 5, 7-11 and 30-38 were objected to for reciting non-elected subject matter. The examiner indicated that Claim 8 was objected to for being dependent upon a rejected base claim, but would not necessarily be allowable if rewritten in independent form. Claims 1, 3, 5, 9, 10 and 30-37 were rejected under 35 U.S.C. 102(b) as being anticipated by Renhowe et al. Claims 1, 3, 5, 9, 10 and 30-35 were rejected under 35 U.S.C. 102(b) as being anticipated by El-Gaby et al. Claim 11 was rejected under 35 U.S.C. 103(a) as being unpatentable over Renhowe in view of 6,579,857.

On 9 December 2010, applicants filed this petition.

A Request for Continued Examination was filed on 3 January 2011.

DISCUSSION

The file history and petition have been considered carefully.

The petition requests examination on the entire scope of compound claim 1 (Group I and II) and that the methods of using the compounds (Group III and IV) be examined with the compound claims. These requests are persuasive in part.

First, concerning the propriety of the intra-claim restriction required between Group I and Group II, in February 2011, the Office issued a Federal Register Notice entitled "Supplemental Examination Guidelines for Determining Compliance with 35 U.S.C. 112 and for treatment of Related Issues in Patent Applications." Page 7166 sets forth guidelines for the treatment of Markush-type claims:

> "Under principles of compact prosecution, the examiner should also require the applicant to elect a species or group of indistinct species for search and examination (i.e., an election of species). If the examiner does not find the species or group of indistinct species in the prior art, then the examiner should extend the search to those additional species that fall within the scope of a permissible Markush claim. In other words, the examiner should extend the search to the species that share a single structural similarity and a common use. The improper Markush claim should be examined for patentability over the prior art with respect to the elected species or group of indistinct species, as well as the species that share a single structural similarity and a common use with the elected species or group of indistinct species (i.e., the species that would fall within the scope of a proper Markush claim)."

In view of these new guidelines, the restriction between Group I and II is withdrawn and re-formatted as a provisional election of species requirement. Similarly the restriction requirement between Group III and IV is withdrawn and re-formatted as a provisional election of species requirement. Elected Group I and species of example 3 will continue to be examined in a manner consistent to the Federal Register Notice.

Concerning the restriction required between the product and process, ISPE Guidelines provides the following example directed to this situation:

> 10.21 Example 1
>
> Claim 1: A method of manufacturing chemical substance X.
>
> Claim 2: Substance X.
>
> Claim 3: The (method of) use of substance X as an insecticide.
>
> Unity exists between claims 1, 2 and 3. The special technical feature common to all the claims is substance X. However, if substance X is known in the art, unity would be lacking because there would not be a special technical feature common to all the claims.

In this example, product claim 2, directed to Substance X is identified as being the shared technical feature. In this instant application, the compounds of Group I are considered to be the shared technical feature. The method of using the compound (claim 3 of the Example) is comparable to this application's Groups (III and IV) method of using the compound. In keeping

with this example, the examiner here has determine that the technical feature (the product) does not make a contribution over the prior art, as evidenced by the outstanding prior art rejections.

For this reason, unity remains lacking between the product (rejoined Groups I and II) and the process (rejoined Groups III and IV).

DECISION

The petition filed under 37 CFR 1.181 on 10 June 2011 is **GRANTED-IN-PART** follows.

The restriction required between Groups I and II has been withdrawn and is replaced with an election of species requirement.

The restriction requirement set forth between Group III and IV has been withdrawn.

The restriction requirement between the products (Groups I and II, now rejoined) and the processes (Group III and IV, now rejoined) is maintained in view of the fact that a prior art rejection is pending upon the product claims. Should all claims to the product become allowable, the examiner will consider the process claims for rejoinder according to the practice set forth in MPEP 821.04(b).

The objection to Claims 1-5, 7-11 and 30-38 for reciting non-elected subject matter has been withdrawn. The objection to Claims 4, 7, 8, 10, 11 and 38 for being dependent upon a rejected base claim, but would not necessarily be allowable if rewritten in independent form is withdrawn. Markush claims will be examined according to the procedures set for in the February 2011 Federal Register Notice.

The application will be forwarded to the examiner to consider the papers filed 3 January 2011, and to prepare an Office action consistent with this petition decision.

Any request for reconsideration of this petition decision should be filed under 37 CFR 1.181 with two months of the mail date of this decision.

Should there be any questions regarding this decision, please contact Quality Assurance Specialist Julie Burke by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-0512 or by Official Fax at 703-272-8300.

Remy Yucel
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date January 17, 2012

In re Application of Kimberley Hanke

Application No. 10573218

Filed: 16-Oct-2006

Attorney Docket No. 16245-000001/U

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), January 17, 2012 , 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 outstanding Office communication. The date of abandonment is the day after the last day of the period set for reply in the Office action plus any applicable extensions of time properly requested.

The electronic 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 aresponse; (2) the petition fee as set forth in 37 CFR 1.17 (m); and (3) the required statement of unintentional delay have been received. Accordingly, the response is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Technology Center.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**
Application Number	10573218
Filing Date	16-Oct-2006
First Named Inventor	Kimberley Hanke
Attorney Docket Number	16245-000001/US
Title	System for manipulating three-dimensional images

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional

Petition Fee

- ○ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ○ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).
- ◉ Applicant(s) status remains as SMALL ENTITY.
- ○ Applicant(s) status remains as other than SMALL ENTITY.

2. Reply and/or fee

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the amendment and response have already been filed in the above-identified application on
- ◉ Amendment and response are attached

RCE request,submission, and fee.

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the RCE Request, Submission, and Fee have already been filed in the above-identified application on
- ○ RCE Request, Submission, and Fee are attached

Notice of Appeal

○ I certify, in accordance with 37 CFR 1.4(d)(4) that the Notice of Appeal and Fee have already been filed in the above-identified application on

○ Notice of Appeal and Fee are attached

3. Terminal Disclaimer is not required, since the Electronic Petition format is not support for Design applications and applications filed before June 8, 1995. Please file using regular petition format for review by the Office of Petitions.

☒ 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.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Timothy J. Martin/
Name	Timothy J. Martin
Registration Number	65044

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

MAILED
AUG 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Janssen et al.	:	ON REQUEST FOR
Application No. 10/573364	:	RECONSIDERATION OF
Filing or 371(c) Date: 03/24/2006	:	PATENT TERM ADJUSTMENT
Atty Docket No.:	:	
PRD-2100USPCT	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705(b), filed July 13, 2011. Applicant requests an adjustment of the patent term to indicate a total Patent Term Adjustment of 569 days, not 417 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

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

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

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

Rather than file 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 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.

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 the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

CC: PATTON BOGGS LLP
8484 WESTPART DRIVE, 9TH FLOOR
McLEAN, VA 22102

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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.

Doc Code: PET.RELIEF
Document Description: Certification and Request for Disaster Relief

PTO/SB/425 (03-11)

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable): 10/573,373	Patent Number (if applicable):
First Named Inventor: Kenzo Takahashi	Title of Invention: Method of Processing Green Coffee Beans

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:

   a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.

   b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding on March 11, 2011.

   c. The statutory or non-statutory time period set for response has not yet expired.

   d. Withdrawal and reissuance of the Office communication is requested.

   e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.

   f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:

   a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.

   b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.

   d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):

   a. The maintenance fee payment was required to have been paid after March 10, 2011.

   b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 – Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).

   c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.

   e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).

   f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. *See* 35 U.S.C 41(c).

   g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:

   a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.

   b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.

   d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature	Date June 2, 2011
Name (Print/Typed) Anthony W. Brooks	Practitioner Registration Number 66,476

***Note**: Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.*

☐ *Total of 1 forms are submitted.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THE WEBB LAW FIRM, P.C.
ONE GATEWAY CENTER
420 FT. DUQUESNE BLVD, SUITE 1200
PITTSBURGH PA 15222

MAILED
JUN 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Takahashi et al.	:	
Application No. 10/573,373	:	DECISION ON PETITION
Filed: February 21, 2007	:	
Attorney Docket No. 0388-060908	:	

This is a decision on the request filed June 2, 2011, seeking relief under the provisions of "Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Catastrophic Events of March 11, 2011 in Japan," 1365 Off. Gaz. Pat. Office 170 (April 19, 2011).

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on January 19, 2011. The instant petition was filed prior to the expiration of the period for reply and the certifications for granting of relief are considered to be met by the submission of the request.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to the Technology Center, Art Unit 1789 for re-mailing the Office action of January 19, 2011. The period for reply will run from the mailing date of the Office action.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON DC 20004

MAILED
APR 07 2011
OFFICE OF PETITIONS

In re Application of	:	
John W. Green et al.	:	
Application No. 10/573,417	:	DECISION ON PETITION
Filed: March 27, 2006	:	
Attorney Docket No. **P71002US0**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 16, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 08, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 09, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the response to the non-final office action of April 08, 2009 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 3744 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
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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MICHAEL TOBIAS
1629 K ST NW
SUITE 300
WASHINGTON, DC 20006

MAILED

MAY 12 2011

OFFICE OF PETITIONS

In re Application of	:	
Akira Takaguchi, et al.	:	
Application No.: 10/573,449	:	DECISION ON PETITION
Filed: January 19, 2007	:	
Attorney Docket No.: 1082/HIROSE	:	

This is a decision on the petition, filed April 4, 2011, under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action mailed September 22, 2010. A Notice of Abandonment was mailed on March 31, 2011.

Petitioner states that a timely reply was filed by facsimile transmission on February 22, 2011. In support, petitioner submitted a copy of an Auto-Reply Facsimile Transmission, showing receipt of, *inter alia*, a RCE transmittal letter – 3 pages, credit card payment form PTO-.2038 – 1 page, and an Amendment – 22 pages. It is noted that the RCE request included a request for a 2-month petition for extension of time and fee. A copy of the previously submitted reply also accompanies the petition, which bears a certificate of mailing dated February 22, 2011, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received

in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

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

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

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

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of September 22, 2010 is hereby withdrawn and the application restored to pending status.

The Notice of Abandonment mailed March 31, 2011 is vacated.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been transmitted by facsimile on February 22, 2011.

This application is being referred to Technology Center AU 1734 for appropriate action in the normal course of business on the reply received with petition.

Telephone inquires 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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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VT

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 SEARS TOWER
CHICAGO IL 60606-6357

MAILED

JAN 13 2010

OFFICE OF PETITIONS

RECEIVED

JAN 21 2010

MARSHALL GERSTEIN

In re Patent No. 7,541,814	:	
Issue Date: June 2, 2009	:	
Application No. 10/573,510	:	ON PETITION
Filed: January 8, 2007	:	
Attorney Docket No. 30882/41934	:	

This is a decision on the petition filed September 29, 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 Terri Johnson at (571) 272-2991. 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.

Terri Johnson
Petitions Examiner
Office of Petitions

[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
Alexandria, VA 22313-1450
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Patent No. : 7,750,161 B2
Ser. No. : 10/573,516
Inventor(s) : Bur et al.
Issued : Jul. 6, 2010
Title : PYRIDINE DERIVATIVES
Docket No. : AC-43-US
Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) **272-3435** or (703) 756-1814

UNITED STATES PATENT AND TRADEMARK OFFICE

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May 4, 2011

Russell D. Orkin
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818

Patent No.	: 7,906,220 B2
Ser. No.	: 10/573,635
Inventor(s)	: Yasunori Hattori, et al.
Issued	: March 15, 2011
Docket No.	: 2950-060834
Title	: **STEEL/ALUMINUM WELDED STRUCTURE**

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481)*. This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-0025 ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

The error purported to be in column 3 lines 59-60 cannot be located in the printed patent.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-0460 or (703) 756-1814

vt

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OFFICE OF PETITIONS

THE WEBB LAW FIRM, P.C.
ONE GATEWAY CENTER
420 FT. DUQUESNE BLVD, SUITE 1200
PITTSBURGH PA 15222

In re Patent No. 7,906,220	:	
Issue Date: March 15, 2011	:	
Application No. 10/573,635	:	DECISION ON PETITION
Filed: March 28, 2006	:	
Attorney Docket No. 2950-060834	:	

This is a decision on the Petition For Suspension Of Rules (37 C.F.R. §1.183), which is being treated as a Petition Under 37 CFR §3.81(b), filed July 29, 2011, to accept the omission of the second assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present petition was submitted to accept the omission of the second assignee's name on the previously submitted PTOL-85B and such error was inadvertent. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to add the omitted second assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with the petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,906,220.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
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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CONNOLLY BOVE LODGE & HUTZ, LLP
P O BOX 2207
WILMINGTON DE 19899

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Schwaneberg	:	
Application No. 10/573,639	:	RESPONSE TO PETITION
Filed: March 28, 2006	:	
Attorney Docket No. 17074-00007	:	

This is a response to the petition, filed February 15, 2011, under 37 CFR 1.59(b) to expunge information from the above identified application.

The petition is **granted**.

A Preliminary Amendment and Response to Notification of Missing Requirements Under 35 USC 371, in addition to other papers, (Response) were filed in the above-identified application on February 11, 2011. The pages of the Response identified Application No. 12/994,292, and the content of the Response is consistent with the content of that application. However, the Response was filed through the Electronic Filing System (EFS) and was directed to the above-identified application, 10/573,639. Petitioner asserts that the Response was unintentionally filed in the above-identified application and requests that the Response be expunged from the File Wrapper of the above-identified application.

Upon a showing satisfactory to the Director, information, other than that forming part of the original disclosure, may be expunged from an application. Since the Office can determine the correct application file for which the erroneously filed papers were intended from the identifying information on the papers, the papers will be transferred as requested.

The Response filed February 11, 2011 will be closed in the Image File Wrapper (IFW) for application serial no. 10/573,639 and also removed from the listing of publicly available documents.

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

Christopher Bottorff
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
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CONNOLLY BOVE LODGE & HUTZ, LLP
P O BOX 2207
WILMINGTON DE 19899

MAILED
JUN. 15 2011
OFFICE OF PETITIONS

In re Patent No. 7,790,374	:	
Issue Date: September 7, 2010	:	
Application No. 10/573,639	:	DECISION ON PETITION
Filed: March 28, 2006	:	
Attorney Docket No. 17074-00007	:	

This is a decision on the Request For Certificate Of Correction Pursuant To 37 CFR 1.323, filed February 8, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"BASF Aktiengesellschaft, Ludwigshafen (DE)"

to:

--SeSaM-Biotech GmbH, Bremen (DE);
Jacobs University Bremen gGmbH, Bremen (DE)--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR §1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR §1.17(i), are required. Therefore, since the petition was accompanied deposit account authorization, the fees have been charged. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,790,374.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
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

CONNOLLY BOVE LODGE & HUTZ, LLP
P.O. BOX 2207
WILMINGTON DE 19899

MAILED

AUG 29 2011

OFFICE OF PETITIONS

In re Application of	:	
Ulrich Schwaneberg	:	
Application No. 10/573,639	:	DECISION ON REQUEST FOR REFUND
Filed: March 28, 2006	:	
Attorney Docket No. 17074-00007	:	

This is a decision on the Request For Refund filed August 22, 2011.

The request is **GRANTED**.

Applicant files the above request for refund and states that "The Patent Office has incorrectly charged for the fees in connection with the filing of a Request Under 37 CFR § 3.81(b) ("the Request") in the above-referenced application twice. Applicants respectfully request the Patent Office to review the fees already charged and to refund the excess fees paid."

A review of Office Finance records for the above-identified application shows that the above fees ($130.00 and $100.00) were paid by credit card on February 8, 2011, and charged again to applicant's deposit account on June 15, 2011 (Account Date). Therefore, a total of $230.00 is being credited to applicant's deposit account no. 03-2775 as authorized.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/24/11

TO SPE OF : ART UNIT 2618

SUBJECT : Request for Certificate of Correction for Appl. No.: 10573770 Patent No.: 7761055

CofC mailroom date: 03/18/11

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

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

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

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.

Formatted: Indent: Left: 1.22"

Comments: _____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Temesghen Ghebretinsae/

SPE **Art Unit** 2618

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.: 7,761,055

DATED: July 20, 2010

INVENTOR(S): Kimmo LAIHO et al

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

In column 13, line 6 (claim 9, line 2), "o" should be --to--.

/APRIL G GONZALES/
Examiner.Art Unit 2618

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

February 21, 2012

John W. Bailey
Birch, Stewart, Kolasch & Birch, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747

Patent No: 7,932,272 B2
Application No: 10/573,890
Applicant: Kazutaka Nakamoto, et al.
Issued: April 26, 2011
Title: **ANTIFUNGAL AGENT CONTAINING HETEROCYCLIC COMPOUND**

Request for Certificate of Correction:

Consideration has been given to your request for the issuance of a certificate of correction for the above- identified patent under the provisions of Rule 1.322/1.323.

In the title, it is the practice to exclude words such as "Improvements in", "New", "A", "Novel", etc., from the printed patent.

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

Further correspondence concerning this matter should be directed to Decisions and Certificate of Correction Branch.

Attached is a copy of a letter mailed July 18, 2011.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460

vt

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

July 18, 2011

John W. Bailey
Birch, Stewart, Kolasch & Birch, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747

Patent No: 7,932,272 B2
Application No: 10/573,890
Applicant: Kazutaka Nakamoto, et al.
Issued: April 26, 2011
Title: **ANTIFUNGAL AGENT CONTAINING HETEROCYCLIC COMPOUND**

Request for Certificate of Correction:

Consideration has been given to your request for the issuance of a certificate of correction for the above- identified patent under the provisions of Rule 1.322/1.323.

In the title, it is the practice to exclude words such as "Improvements in", "New", "A", "Novel", etc., from the printed patent.

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

Further correspondence concerning this matter should be directed to Decisions and Certificate of Correction Branch.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460

vt

Copy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak MI 48067

MAILED
AUG 30 2011
OFFICE OF PETITIONS

In re Patent No. 7,891,412 :
Issue Date: February 22, 2011 :
Application No. 10/573,961 : DECISION ON PETITION
Filed: March 29, 2006 :
Attorney Docket No. TFR0209 :

This is a decision on the Request For Certificate Of Correction, filed June 27, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B and such error was inadvertent. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Valeo Systemes Thermiques, Le Mesnil Saint Denis (FR)"

to:

--Valeo Climatisation, La Verriere (FR)--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR §1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR §1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,891,412.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

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

MAILED
AUG 26 2010
OFFICE OF PETITIONS

In re Application of	:	
Takahashi et al.	:	DECISION ON
Application No. 10/573,967	:	PETITION PURSUANT TO
Filed: March 30, 2006	:	37 C.F.R. § 1.182
Attorney Docket No. Q94014	:	
Title: METHOD OF CONTROLLING	:	
CONTACT ANGLE OF WATER	:	

This is in response to the petition pursuant to 37 C.F.R. § 1.182, requesting the withdrawal of a terminal disclaimer, filed on April 16, 2010.

This petition is **DISMISSED**.

On February 12, 2010, Petitioner submitted a terminal disclaimer to overcome a non-statutory double patenting rejection over co-pending Application number 10/574,200, in a final Office action mailed November 10, 2009.

Receipt of the petition fee is acknowledged.

With this petition, Petitioner has asserted that the terminal disclaimer is not required (pages 1-2 of the petition). This argument has been considered by the Examiner, but has not been deemed to be persuasive. An Office communication from the Examiner has been enclosed with this decision.

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, the response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted**. The reply should include a cover letter entitled

"Renewed Petition pursuant to 37 C.F.R. § 1.182." This is not a final agency action within the meaning of 5 U.S.C § 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[1] hand-delivery,[2] or facsimile.[3] 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 undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[5] All other inquiries concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Encl. Office communication

---

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
5 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 DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10573967	3/30/06	TAKAHASHI ET AL.	Q94014

EXAMINER
Shamim Ahmed

ART UNIT	PAPER
1713	20100607

DATE MAILED:

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

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

Commissioner for Patents

In response to the petition under 1.182, withdrawing the terminal disclaimer filed on February 12,2010 is still proper because the claimed "article" in the instant application broadly encompasses the "microchannel" in the application 10/573,200 and both the application dealing with decreasing a contact angle of water by application of energy (heat and light source).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shamim Ahmed whose telephone number is (571) 272-1457. The examiner can normally be reached on Mon-Thurs day (7:00-3:30) Every Friday Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine G. Norton can be reached on (571) 272-1465. 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.

Shamim Ahmed
Primary Examiner
Art Unit 1713

/Shamim Ahmed/
Primary Examiner, Art Unit 1713

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable): 10/574,052	Patent Number (if applicable):
First Named Inventor: Masayoshi TAKAHASHI et al.	Title of Invention: METHOD FOR COLLAPSING MICROBUBBLES

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:

   a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.

   b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding.

   c. The statutory or non-statutory time period set for response has not yet expired.

   d. Withdrawal and reissuance of the Office communication is requested.

   e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.

   f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:

   a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.

   b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.

   d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):

   a. The maintenance fee payment was required to have been paid after March 10, 2011.

   b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 – Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).

   c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.

   e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).

   f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. *See* 35 U.S.C 41(c).

   g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:

   a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.

   b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.

   d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature	/David M. Ovedovitz/ 2011.04.08 14:31:44 -04'00'	Date	April 8, 2011
Name (Print/Typed)	David Ovedovitz	Practitioner Registration Number	45,336

***Note**: Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.*

*Total of 1 forms are submitted.

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

LADAS & PARRY
5670 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES CA 90036-5679

MAILED
APR 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Takahashi et al.	:	
Application No. 10/574,052	:	DECISION ON PETITION
Filed: October 13, 2006	:	
Attorney Docket No. B-5926PCT 623364-3	:	

This is a decision on the request filed April 8, 2011, seeking relief under the provisions of an announcement by the Under Secretary and Director of the United States Patent and Trademark Office on March 17, 2011, http://www.uspto.gov/patents/announce/japan_relief_2011mar17.pdf, providing relief to inventors and patent owners in areas affected by the earthquake and resulting tsunami of March 11, 2011.

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on November 22, 2010. The instant petition was filed prior to the expiration of the period for reply and the certifications for granting of relief are considered to be met by the submission of the request.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to the Technology Center, Art Unit 1776 for re-mailing the Office action of November 22, 2010. The period for reply will run from the mailing date of the Office action.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LADAS & PERRY
5670 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES, CA 90036-5679

MAILED
APR 18 2011
OFFICE OF PETITIONS

In re Application of
Masayoshi Takahashi et al
Application No. 10/574,052
Filed: October 13, 2006
Attorney Docket No.: B-5926PCT 623364-3

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 21, 2011.

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 is filed by Mavis S. Gallenson on behalf of the practitioners of record associated with Customer Number 12-0415.

The Office no longer accepts an address change to the new practitioner identified in the request, absent the filing of a power of attorney to the new representative. The Office will, however, change the correspondence address of record to the most current address provided for (1) the intervening assignee of the entire interest or (2) the first named inventor.

The request to withdraw from record cannot be approved at this time, since a current correspondence address was not provided.

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

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-3210. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

Irvin Dingle
Petitions Examiner
Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**
Application Number	10574093
Filing Date	28-Nov-2007
First Named Inventor	Valery Astafiev
Attorney Docket Number	25065-33
Title	Method for Producing Ceramic Nuclear Fuel Tablets, Device and Container for Carrying O

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional

Petition Fee

- ○ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ○ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).
- ○ Applicant(s) status remains as SMALL ENTITY.
- ◉ Applicant(s) status remains as other than SMALL ENTITY.

2. Reply and/or fee

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the amendment and response have already been filed in the above-identified application on
- ◉ Amendment and response are attached

RCE request,submission, and fee.

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the RCE Request, Submission, and Fee have already been filed in the above-identified application on
- ○ RCE Request, Submission, and Fee are attached

Notice of Appeal

○ I certify, in accordance with 37 CFR 1.4(d)(4) that the Notice of Appeal and Fee have already been filed in the above-identified application on

○ Notice of Appeal and Fee are attached

3. Terminal Disclaimer is not required, since the Electronic Petition format is not support for Design applications and applications filed before June 8, 1995. Please file using regular petition format for review by the Office of Petitions.

☒ 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.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/HOT/
Name	Herb O'Toole
Registration Number	31404

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

Decision Date February 15, 2012

In re Application of Valery Astafiev

Application No. 10574093

Filed: 28-Nov-2007

Attorney Docket No. 25065-33

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), February 15, 2012 , 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 outstanding Office communication. The date of abandonment is the day after the last day of the period set for reply in the Office action plus any applicable extensions of time properly requested.

The electronic 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 aresponse; (2) the petition fee as set forth in 37 CFR 1.17 (m); and (3) the required statement of unintentional delay have been received. Accordingly, the response is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Technology Center.

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

MAILED
SEP 23 2010
OFFICE OF PETITIONS

HAYNES AND BOONE, LLP
IP SECTION
2323 VICTORY AVENUE
SUITE 700
DALLAS TX 75219

In re Application of	:	
HAMILTON, Eric et al.	:	
Application No. 10/574,159	:	DECISION ON PETITION
Filed: January 16, 2007	:	TO WITHDRAW
Attorney Docket No. **HAND0003**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 11, 2010.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the change of the correspondence address is not that of: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71 who has properly intervened.

As stated in the previous decision mailed March 29, 2010, the Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Petitioner has stated in the instant request that a statement under 37 CFR 3.73(b) was previously filed on February 22, 2008. However, our records indicate that the assignment data differs from the records at the Office. Therefore, as there is currently no Statement under 37 CFR 3.73(b) with the current assignee information of record in the instant application, the Office cannot approve or change the correspondence address on the Request to Withdraw at this present time.

If an assignee has intervened in this application, then an updated Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be submitted with a renewed request.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4618.

/Tredelle D. Jackson/

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

MAILED

OCT 14 2010

OFFICE OF PETITIONS

In re Application of
Hidenori Nagai, et al.
Application No. 10/574,200
Filed: March 31, 2006
Attorney Docket No.: Q94015

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(3)

This is a decision on the petition, filed October 13, 2010, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment. *See* 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

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

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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MAR 22 2012
OFFICE OF PETITIONS

Ramey & Browning, PLLC
448 West 19th Street
#229
Houston, TX 77008

In re Application of Chen et al. :
Application No. 10/574,254 : Decision on Petition
371(c) Date: March 30, 2006 :
Attorney Docket No. 20129.004.PCUS00 :

This is a decision on the petition under 37 CFR 1.137(b) filed January 30, 2012, and supplemented February 6, 2012, to revive the above-identified application.[1]

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 22, 2009, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on September 23, 2009. A Notice of Abandonment was mailed December 31, 2009.

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, and
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.[2]

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied (1) a reply in the form of an amendment, (2) the required petition fee of $930, and (3) the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

[1] The Office notes the petition filed February 6, 2012, appears to be identical to the petition filed January 30, 2012, except for the date of transmission.
[2] A terminal disclaimer is also necessary if the application is a design application or if the application was filed on or before June 8, 1995.

Attorney Matthew Browning, the individual who signed the petition, does not appear to have been an attorney or agent of record at the time the application became abandoned. Therefore, it appears Attorney Browning may not have been in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Attorney Browning that the entire delay was unintentional is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[3] In the event that such an inquiry has not been made, petitioner must make such an inquiry. If the inquiry results in the discovery that a portion of the delay from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was intentional, petitioner must notify the Office.

Technology Center Art Unit 1645 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[3] *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).

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ROBINSON INTELLECTUAL PROPERTY LAW OFFICE, P.C.
3975 FAIR RIDGE DRIVE
SUITE 20 NORTH
FAIRFAX VA 22033

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Application of	:	
Mitsuaki Osame et al	:	
Application No. 10/574,290	:	DECISION GRANTING PETITION
Filed: March 31, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 0756-7670	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 23, 2011, 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 28, 2011 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 2816 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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Robert D. Shedd, Patent Operations
THOMSON Licensing LLC
P.O. Box 5312
Princeton NJ 08543-5312

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Ralf Schaefer et al.	:	
Application No. 10/574,328	:	DECISION ON PETITION
Filed: December 8, 2006	:	
Attorney Docket No. PF030154	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 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, February 4, 2010, 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 May 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

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

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

This application is being referred to Technology Center AU 2476 for appropriate action by the Examiner in the normal course of business on the reply received

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Joel M. Fogelson
Two Independence Way, Suite 200
Princeton, NJ 08540

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

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NOV 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Olaf GAWER, et al	:	
Application No. 10/574,368	:	DECISION ON PETITION
Filed: January 16, 2007	:	
Attorney Docket No. 2642.025	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 5, 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 2, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 3, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) the required 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 $1110 extension of time fee submitted with the petition on October 5, 2010, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account No. 08-1935.

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

This application is being referred to Technology Center AU 3753 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwy
Petitions Examiner
Office of Pétitions

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ALBANY NY 12203

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NOV 16 2010
OFFICE OF PETITIONS

In re Application of
Olaf GAWER, et al
Application No. 10/574,368
Filed: January 16, 2007
Attorney Docket No. 2642.025

CORRECTED
DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 5, 2010, 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, October 2, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 3, 2010.

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).

With respect to item (1): A review of the Office record shows that no reply accompanied the petition dated October 5, 2010. In this regard, the petition filed October 5, 2010, does not meet the requirements set out in 37 CFR 1.137(b).

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

Since the $1110 extension of time fee submitted with the petition on October 5, 2010, was subsequent to the maximum extendable period for reply, this fee is unnecessary and has been credited to petitioner's Deposit Account No. 08-1935.

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

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

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

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

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

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

/Diane C. Goodwyn/
Petitions Examiner
Office of Petitions

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5 COLUMBIA CIRCLE
ALBANY NY 12203

MAILED
MAR 31 2011
OFFICE OF PETITIONS

In re Application of	:	
Olaf Gawer et al	:	
Application No. 10/574,368	:	DECISION ON REQUEST FOR REFUND
Filed: March 31, 2006	:	
Attorney Docket No. 2642.025	:	

This is a decision on the Request For Refund filed, March 22, 2011.

The request is **GRANTED**.

Applicant files the above request for refund and states that "On March 15, 2011, Applicant filed a Renewed Petition Under 37 CFR 1.137(b) requesting reconsideration of the dismissed Petition and inadvertently paid a second $1,620 Petition fee. Since the second Petition fee was paid in error, Applicant respectfully requests that this error be excused and the overpayment be refunded."

In view of the above, the petition fee of $1,620.00 paid on March 15, 2011 has been credited to petitioner's deposit account as authorized.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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ALBANY NY 12203

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MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
GAWER, et al	:	
Application No. 10/574,368	:	DECISION ON PETITION
Filed: January 16, 2007	:	
Attorney Docket No. 2642.025	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 15, 2011, 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 2, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 3, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) the required 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 3753 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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MAILED
MAY 10 2011
OFFICE OF PETITIONS

Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park CA 94025-1105

In re Application of	:	
Boecker	:	
Application No. 10/574,373	:	ON PETITION
Filed: December 3, 2007	:	
Attorney Docket No. PEL-2840	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to file a timely and proper response to the final Office action mailed September 22, 2010, which set a shortened statutory period for reply of three months from its mailing date. The application became abandoned on December 23, 2010.

The Request for Continued Examination filed March 23, 2011, is noted.

The request for an extension of time within the third month is noted, but cannot be granted because the request was made outside the maximum statutory period for reply to the final Office action. The amount of $555.00 will be refunded, in due course.

The application file is being forwarded to Technology Center 3700, GAU 3736 for further processing.

Telephone inquiries concerning this decision 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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OCT 29 2010
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

In re Application of	:	
Kobayashi et al.	:	
Application No. 10/574563	:	ON APPLICATION FOR
Filing or 371(c) Date: 04/04/2006	:	PATENT TERM ADJUSTMENT
Atty Docket No.:	:	
Q94204	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705, filed June 17, 2010. Applicant submits that the proper patent term adjustment to be indicated on the patent is 594 days, not 256 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

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

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

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

Rather than file 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).

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

The application file 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.

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) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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

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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.
10/574,597	04/27/2007	Hidetsugu Tsubouchi	01197.0268	3970

22852 7590 10/15/2010
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER
SACKEY, EBENEZER O

ART UNIT	PAPER NUMBER
1624	

MAIL DATE	DELIVERY MODE
10/15/2010	PAPER

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

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

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OCT 1 5 2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Application of:
Tsubouchi et al.
Serial No.: 10/574,597
Filed: April 27, 2007
Attorney Docket No.: **01197.0268**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.59(b), filed April 16, 2010, to expunge information from the above identified application. This application has not been allowed. The delay is responding to this petition is regretted but it has only just been brought to the attention of the Deciding Official.

Petitioner requests that documents which were improperly submitted be expunged from the record. Specifically, petitioner requests an IDS dated April 27, 2007 having therein five documents was an inadvertent error and that it be expunged. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entries for the documents have been closed and as such the documents are no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

MAILED

OCT 18 2010

OFFICE OF PETITIONS

In re Application of
Nathan Ravi
Application No. 10/574,667
Filed: April 4, 2006
Attorney Docket No. 111828-00137

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) filed August 27, 2010.

The request is **NOT APPROVED**.

The Office will no longer approve requests from practitioners to withdraw from application where the requesting practitioners is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to the documents they file.

A review of the file record indicates that Blank Rome, LLP does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

A review of the file also indicates that while the oath/declaration did include a power of attorney, the request was not accepted because it was improper. A power of attorney filed after June 25, 2004 cannot list more than 10 attorneys or agents without the use of customer number practice.

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

There is an outstanding Office action mailed September 30, 2010 that requires a reply from the applicant.

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: UNITED STATES OF AMERICA AS PREPRESENTED
BY THE DEPT OF VETERANS AFFAIRS
TECHNOLOGY TRANSFER PROGRAM, OFFICE OF
RESEARCH AND DEVELOPMENT
810 VERMONT AVENUE, NW
WASHINGTON, DC 20420

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MAILED
MAR 12 2012
OFFICE OF PETITIONS

Nokia Corporation and Alston & Bird LLP
c/o Alston & Bird LLP
Bank of America Plaza, 101 South Tryon Street
Suite 4000
Charlotte NC 28280-4000

In re Application of
Kren
Application No. 10/574,728
Filed: April 6, 2006
Attorney Docket No. **042933/387118**

ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed February 8, 2012.

The petition is **granted**.

The above-identified application became abandoned March 26, 2011, for failure to file an appeal brief within the period for response set by the Notice of Panel Decision from Pre-Appeal Brief Review mailed April 25, 2011. A Notice of Abandonment was mailed December 15, 2011.

The instant petition was filed February 8, 2012, wherein petitioner maintains that correspondence mailed April 25, 2011, was not received.

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.

The application file is being forwarded to Technology Center GAU 2194 for further processing that will include re-mailing the Notice of Panel Decision from Pre-Appeal Brief Review and resetting of the period for reply.

Questions concerning this decision 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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HAVERSTOCK & OWENS LLP
162 N WOLFE ROAD
SUNNYVALE CA 94086

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Martin Barkley Harris, et al.	:	
Application No. 10/574,737	:	ON PETITION
Filed: April 3, 2006	:	
Attorney Docket No. YC-00900	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 2011, 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 17, 2010. 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 June 18, 2010. The Notice of Abandonment was mailed October 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2991.

This application is being referred to Technology Center AU 2617for 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.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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ROBERT J. DEPKE
LEWIS T. STEADMAN
ROCKEY, DEPKE & LYONS, LLC
SUITE 5450 SEARS TOWER
CHICAGO IL 60606-6306

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of	:	
Takeo EGUCHI et al.	:	
Application No. 10/574,738	:	DECISION ON PETITION
Filed: January 16, 2007	:	
Attorney Docket No. 075834.00567	:	

This is a decision on the petition, filed June 10, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure s to timely pay the issue and publication fees on or before May 17, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed February 17, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 18, 2010.

Petitioner states that a timely reply was received via auto- reply facsimile on May 17, 2010. Petitioner has submitted a copy of the auto- reply facsimile confirmation from the Office.

A review of the Office records indicates that a reply was received, which gave the Office authorization to charge the issue and publication fees.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The issue and publication fees submitted with the petition will be accepted.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272- 4231.

This application is being referred to the Office of Data Management.

Thurman K. Page
Petitions Examiner
Office of Petitions

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JUN 1 0 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	10/574,738	**Confirmation No.:**	5476
Applicant:	Takeo Eguchi		
Filed:	April 4, 2006		
TC/A.U.:	2853		
Examiner:	Geoffrey S Mruk		
Docket No.:	075834.00567		
Customer No.:	33448		

PETITION TO WITHDRAW HOLDING OF ABANDONMENT

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

S I R:

On June 3, 2010, the United States Patent Office mailed a Notice of Abandonment for the above-referenced United States patent application as a result of a purported failure to pay the Issue Fee due May 17, 2010. Applicant respectfully submits that the undersigned transmitted the issue fee payment in a timely manner and that the holding of abandonment is erroneous.

Specifically, the undersigned transmitted a timely issue fee payment which was actually received by the United States Patent Office via its automated facsimile communication system on May 17, 2010. Accordingly, Applicant requests that the abandoned status of this application be withdrawn and the application issue as a patent.

In support of this petition, Applicant has attached a copy of the Auto-Reply Facsimile transmission from the United States Patent Office dated May 17, 2010, indicating that two pages had been received at 3:52:44 PM (Easter Daylight Time) and the image of the first

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JUN 10 2010

page indicates that the transmission was for this application. A copy of the properly executed issue fee transmittal form which was the second page of the two page transmission is also attached.

Applicant respectfully submits that the documents confirm that the issue fee transmittal form was actually received within the requisite period for response and that the holding of abandonment should therefore be withdrawn. Applicant therefore requests that the United States Patent Office withdraw the abandoned status of this application and now process the issue fee payment fro this application.

Respectfully submitted,

Date: June 10, 2010 (Reg. #37,607)

Robert J. Depke
ROCKEY, DEPKE & LYONS, LLC
Sears Tower, Suite 5450
Chicago, Illinois 60606-6306
Tel: (312) 277-2006
Attorney for Applicant

PAGE 4/8 * RCVD AT 6/10/2010 5:53:38 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/14 * DNIS:2738300 * CSID:13127048137 * DURATION (mm-ss):02-22

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/27/11

TO SPE OF : ART UNIT: **1624 Attn: WILSON JAMES O (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/574797 Patent No.: 7812154

CofC mailroom date: 01/11/2011

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

Note: **Please check the Abstract**
Should this change be made or not

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

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 O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

1624
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/27/11

TO SPE OF : ART UNIT: **1624 Attn: WILSON JAMES O (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/574797 Patent No.: 7812154

CofC mailroom date: 01/11/2011

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

Note: **Please check the Abstract**
Should this change be made or not

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

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 O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE

1624
Art Unit

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NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004-2128

MAILED
APR 28 2011
OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki, et al. :
Application No.: 10/574,829 : ON PETITION
Filed: April 6, 2006 :
Attorney Docket No.: 740756-2950 :

This is a decision on the petition, filed April 27, 2011, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 6, 2011, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The application is being referred to Technology Center AU 2814 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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LORUSSO & ASSOCIATES
PO BOX 21915
PORTSMOUTH NH 03802

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OCT 11 2011

OFFICE OF PETITIONS

In re Application of
Zoppas, et al.
Application No. 10/574,889
Filed: April 7, 2006
Atty. Dkt. No.: NBG-113

: DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed October 3, 2011.

The Notice of Abandonment mailed August 25, 2011 indicates that the application is abandoned for failure to timely a proper reply to the Notice of Allowance mailed May 11, 2011.

Petitioners assert a reply to the Notice of Allowance was timely submitted August 11, 2011 and have provided a copy of the reply.

Petitioners arguments have been carefully considered and found persuasive. It is noted that the referenced reply appears to have been received by the USPTO on August 26, 2011, after the time period for reply set forth in the Notice of Allowance. However, as the reply contains a certificate of mailing in conformance with 37 CFR 1.8, the reply is accepted as having been timely filed.

In view of the evidence presented, the petition to withdraw the holding of abandonment is hereby GRANTED.

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

The application file is being forwarded to the Office of Data Management for further processing.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON, DC 20001

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DEC 07 2010
OFFICE OF PETITIONS

In re Application Aitken et al. Application No. 10/574,911 Filed: May 11, 2007 Attorney Docket No. NUSE-020/00US 307302-2068	: : : : :	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 1, 2010.

The request is **DISMISSED**.

A review of the file record indicates that Cooley LLP was never appointed power of attorney in this patent application and therefore, was only designated as the correspondence address of record. As a result, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

There are no outstanding Office actions that require a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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17 AUG 2010

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ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON, DC 20036

In re Application of:
TOLEDO ANTONIO, Jose, Antonio, et al.
U.S. Application No.: 10/574,944
PCT No.: PCT/MX2003/000081
International Filing Date: 10 October 2003
Priority Date: None
Attorney Docket No.: 51319
For: CATALYTIC COMPOSITION FOR HYDROPROCESSING OF LIGHT AND INTERMEDIATE OIL FRACTIONS

DECISION

This decision is issued in response to the "Communication" filed 02 December 2009, treated herein as a petition for acceptance of the accompanying English translation of the claims in the international application as filed. No petition fee is required.

BACKGROUND

The procedural background for the present application was set forth in the decision mailed on 30 October 2009. The decision granted applicants' petition to withdraw the holding of abandonment and confirmed applicants' filing herein of an executed declaration on 21 March 2007. However, the decision also indicated that the English translation of the international application filed by applicants was defective. Specifically, the decision noted that the translation filed by applicants included only 19 claims, while the published international application contains 20 claims. The decision indicated that a second "Notification of Missing Requirements" (Form PCT/DO/EO/905) would be issued, requiring submission of an acceptable English translation of the application as filed.

On 12 November 2009, rather than issue the second "Notification Of Missing Requirements" required by the previous decision, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Acceptance" (Form PCT/DO/EO/903) indicating that the requirements of 35 U.S.C. 371(c) were satisfied as of 21 March 2007. Also on 12 November 2009, a filing receipt was issued identifying the date under 35 U.S.C. 371(c) as 21 March 2007.

On 02 December 2009, applicants filed the "Communication" considered herein, accompanied by an English translation of the twenty claims contained in the international application as filed.

On 23 June 2010, a non-final Office Action was mailed.

On 15 July 2010, applicants filed a "Supplemental Petition Under 37 CFR 1.181 For Resubmission Of Supplemental Information Statement And Attachments" regarding the submission of an Information Data Sheet (IDS) and accompanying patent documents.[1]

DISCUSSION

The communication filed by applicant on 02 December 2009 was accompanied by the required English translation of the twenty claims included in the international application. This submission is accepted as completing applicants' submission of the required English translation of the international application as filed. Deposit Account No. 18-2220 will be charged the $130 processing fee required for submitting the completed translation later than thirty months after the priority date. In addition, a corrected "Notification Of Acceptance" (Form PCT/DO/EO/903) and filing receipt will be issued correctly identifying the date of completion of the requirements of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) as 02 December 2009, the date applicant filed the complete set of translated claims.

It is noted that applicants' 02 December 2009 correspondence asserts that the accompanying supplemental translation was not necessary because the one claim left out of the previously-filed English translation was a duplicate of another translated claim. However, 37 CFR 1.495(c)(1)(i) requires submission of a "translation of the international application as filed;" there is no exception for redundant passages. Thus, regardless of whether any two claims in the international application were identical, applicants were required to submit herein an English translation of all the claims, as filed.

CONCLUSION

The petition to confirm submission of the English translation of the claims required to complete the English translation of the international application as filed is **GRANTED**.

The English translation of claims 1-20 filed 02 December 2009 completes applicants' submission of the English translation of the international application as filed.

The "Notification Of Acceptance" (Form PCT/DO/EO/903) and filing receipt mailed 12 November 2009, both of which incorrectly identified the date under 35 U.S.C. 371(c) as 21 March 2007, are hereby **VACATED**.

[1] The petition under 37 CFR 1.181 filed by applicants on 15 July 2010 is not considered herein and will be treated separately in due course by the appropriate deciding official.

This application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a corrected "Notification Of Acceptance" (Form PCT/DO/EO/903) and filing receipt properly identifying the date under 35 U.S.C. 371(c) as **02 December 2009**.

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

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1300 19TH STREET, N.W.
SUITE 600
WASHINGTON, DC 20036

MAILED

JAN 06 2011

PCT LEGAL ADMINISTRATION

In re Application of:
TOLEDO ANTONIO, Jose, Antonio, et al.
U.S. Application No.: 10/574,944
PCT No.: PCT/MX2003/000081
International Filing Date: 10 October 2003
Priority Date: None
Attorney Docket No.: 51319
For: CATALYTIC COMPOSITION FOR HYDROPROCESSING OF LIGHT AND INTERMEDIATE OIL FRACTIONS

DECISION

This decision is issued in response to the "Request For Reconsideration 17 August 2010 Decision Of Office Of PCT Legal Administration" filed 23 September 2010. No petition fee is required.

BACKGROUND

The procedural background for the present application was set forth in the decisions mailed on 30 October 2009 and 17 August 2010.

The 17 August 2010 decision is the subject of the present request for reconsideration. The decision found that applicant's 02 December 2009 submission of an English translation of all 20 claims contained in the international application completed the English translation requirement of 35 U.S.C. 371(c)(2), and it indicated that a corrected "Notification Of Acceptance" (Form PCT/DO/EO/903) would be issued that properly identified the date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) as 02 December 2009. The decision rejected applicant's argument that the English translation filed on 07 April 1006 was an acceptable translation of the international application as filed.

On 23 September 2010, applicant filed the "Request For Reconsideration 17 August 2010 Decision Of Office Of PCT Legal Administration" considered herein.

DISCUSSION

The present submission argues that the English translation of the international application filed on 07 April 1006 was a complete translation that should be accepted in satisfaction of the requirement of 35 U.S.C. 371(c)(2) and that, therefore, the appropriate 35 U.S.C. 371(c) date is

21 March 2007 (as set forth in the vacated "Notification of Acceptance" mailed 12 November 2009). Applicant also argues that the delay in notifying applicant of the defective translation and the subsequent change in the 35 U.S.C. 371(c) date have prejudiced applicant, specifically with respect to any patent term adjustment that will be applied to the present application.

1. Date Under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4)

Applicant's arguments regarding the English translation have been considered but are found unconvincing. The requirements of an acceptable translation under 35 U.S.C. 371(c)(2) and 37 CFR 1.495(c)(1)(i) are discussed in MPEP section 1893.01(d) as follows:

> The translation must be a translation of the international application as filed or with any changes which have been properly accepted under PCT Rule 26 or any rectifications which have been properly accepted under PCT Rule 91. A translation of less than all of the international application (e.g., a translation that fails to include a translation of text contained in the drawings or a translation that includes a translation of claims amended under PCT Article 19 or 34 but does not include a translation of the original claims) is unacceptable. In addition, a translation that includes modifications other than changes that have been properly accepted under PCT Rule 26 or 91 (e.g., a translation that includes headings that were not present in the international application as originally filed) is unacceptable. ...
>
> Amendments, even those considered to be minor or to not include new matter, may not be incorporated into the translation.

The English translation filed on 07 April 2006 was incomplete in that it only included a translation of 19 of the 20 numbered claims of record. As noted in the previous decision, regardless of whether the missing claim was virtually identical to another claim, the failure to include the English language version of each of the numbered claims of record renders the original translation incomplete and unacceptable under 35 U.S.C. 371(c)(2) and 37 CFR 1.495(c)(1)(i).[1]

In view of the above, the appropriate date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) for the present application is 02 December 2009, the date on which the English translation of the complete set of 20 claims was first filed herein. Applicant's request that the 35 U.S.C. 371(c) date be corrected to 21 March 2007, a date prior to the submission of the complete English translation, is therefore appropriately dismissed.

2. Potential Prejudice To Applicant Caused By Delays

Applicant argues that, because patent term adjustment is calculated with respect to the 35 U.S.C. 371(c) date, applicant will be prejudiced by the delay between the 05 March 2007 mailing of the "Notification Of Missing Requirements" (which did not require a corrected English translation) and the 30 October 2009 decision that first informed applicant of the defect in the

---

[1] See also MPEP section 608.01(V), which states that an English translation of a foreign-language specification filed in the USPTO must be "a literal translation."

English translation. However, any arguments relating to patent term adjustment are premature at this point in prosecution. Pursuant to 37 CFR 1.705(a), if a notice of allowance is eventually issued in the present application, such notice of allowance will set forth the patent term adjustment for the present application. 37 CFR 1.705(b) sets forth the mechanism for requesting reconsideration of the allotted patent term adjustment, and it specifically indicates that such a request for reconsideration of the patent term adjustment "may not be filed earlier than the date of mailing of the notice of allowance." Thus, if and when a notice of allowance is issued herein, applicant will have the opportunity to make any relevant arguments relating to the patent term adjustment and such arguments will be considered at that time by the appropriate deciding official.

CONCLUSION

The "Request For Reconsideration 17 August 2010 Decision Of Office Of PCT Legal Administration" is **DISMISSED** without prejudice.

As indicated in the previous decision, the English translation of claims 1-20 required to complete the English translation requirement of 35 U.S.C. 371(c)(2) was not submitted until 02 December 2009. The appropriate date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) for the present application is therefore 02 December 2009.

This application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a corrected "Notification Of Acceptance" (Form PCT/DO/EO/903) and filing receipt properly identifying the date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) as **02 December 2009**.

/RichardMRoss/

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

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1300 19TH STREET, N.W.
SUITE 600
WASHINGTON, DC 20036

MAILED
JUN 03 2011
OFFICE OF PETITIONS

In re Application of	:	
Toledo Antonio et al.	:	
Application No. 10/574944	:	
Filing or 371(c) Date: 12/02/2009	:	ON APPLICATION FOR
Attorney Docket Number:	:	PATENT TERM ADJUSTMENT
51319	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)," filed April 15, 2011. Applicants' request recalculation of the patent term adjustment calculation to 730 days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request that this Office equitably recognize the 371(c) filing date of March 21, 2007 for the present application, which would accord a patent term adjustment of 763 days. The petition is properly treated under 37 CFR 1.705(b).

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), as it relates to the assertion that the Office erred in failing to calculate a delay of 763 days is **DISMISSED**.

Background

On January 25, 2011, 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 zero (0) days.

The present petition

On April 15, 2011, applicants timely submitted the instant application for patent term adjustment[1]. Applicants request that the Determination of Patent Term Adjustment be corrected from zero (0) days, as indicated on the Determination of PTA mailed January 25, 2011, to an adjustment of 763 days. Applicants request that this Office equitably recognize the 371(c) filing date of March 21, 2007 for the present application. Applicants provide that applicants previously petitioned for the earlier 371(c) filing date, and in a Decision adverse to the petition, the Office

[1] PALM records show that the Issue Fee payment was filed on April 15, 2011.

recognized a 371(c) filing date of December 2, 2009. Applicants provide that their arguments directed to patent term adjustment were premature at the time because a Notice of Allowance had not been issued.

Applicants have now received a Notice of Allowance, and petition that, for consideration of the patent term adjustment, the 371(c) filing date be equitably recognized as the date on which the applicants filed their response to the Notification of Missing Requirements, March 21, 2007. Applicants request favourable recognition of the March 21, 2007 date, for the reasons set forth in the Applicant's Request for Reconsideration filed September 23, 2010, which, applicants provide, was filed in response to the decision of the Office of PCT Legal Administration mailed on August 17, 2010.

Office records

A review of the application file reveals that applicant's petition filed September 23, 2010, requested the Office grant a 371(c) filing date of March 21, 2007 because to do otherwise would be grossly unfair. Applicant's requested reinstatement of the 371(c) filing date as March 21, 2007.

In a decision on the petition filed September 23, 2010, was mailed on January 6, 2011. The decision dismissed the September 23, 2010 petition, stating, inter alia, that the failure to include the English Language version of each of the numbered claims recorded renders the original translation incomplete or unacceptable under 35 U.S.C. 371(c)(2) and 37 CFR 1.495(c)(1)(i). The decision informed applicants that a filing receipt properly identifying the date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) as **02 December 2009** would be mailed. The decision dismissed as premature arguments relating to patent term adjustments.

Analysis

Applicants file the present petition requesting this Office equitably recognize the 371(c) filing date of March 21, 2007 and grant a patent term adjustment of 763 days for the reasons set forth in the Applicant's Request for Reconsideration filed September 23, 2010. Applicants fail to cite a basis in the patent term adjustment statute or rules for requesting equitable relief.

The applicable rule, 37 CFR 1.705(b), provides:

> Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. An application for patent term adjustment under this section must be accompanied by:
> (1) The fee set forth in § 1.18(e); and
> (2) A statement of the facts involved, specifying:

> (i) The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment;

(Emphasis added)

As noted supra, applicants have failed to provide a basis or bases under 37 CFR 1.702 for the adjustment.

The Office provides, in extraordinary situations, where justice requires, suspension or waiver of the regulations. The proper venue is a petition under 37 CFR 1.183, Suspension of rules, which states:

> In an extraordinary situation, when justice re-quires, 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).

In this instance, however, and as noted in the decision on petition mailed January 6, 2011, the failure to include the English Language version of each of the numbered claims recorded renders the original translation incomplete or unacceptable under 35 U.S.C. 371(c)(2) and 37 CFR 1.495(c)(1)(i).

Applicants are reminded that the use of "shall" appears in 35 USC § 371 pertaining to the filing of a translation into the English language of the international application in the patent and Trademark Office. It is well settled that the use of "shall" in a statute is the language of command, and where the directions of a statute are mandatory, strict compliance with the statutory terms is essential. Farrel Corp. v. U.S. Int'l Trade Comm'n, 942 F.2d 1147, 20 USPQ2d 1912 (Fed. Cir. 1991).

Here, applicants failed to comply with 35 U.S.C. 371. As noted supra, waiver of the statute is not possible.

Moreover, applicants failed to comply with 37 CFR 1.495(c)(1)(i). As provided in the Manual of Patent Examining Procedure (MPEP) 513,

> [a] party's inadvertent failure to comply with the requirements of a rule is not deemed to be an extraordinary situation that would warrant waiver of a rule under 37 CFR 1.183, 2.146(a)(5) or 2.148, nor is such an inadvertent omis-sion considered "unavoidable," within the meaning of 15 U.S.C. 1062(b), 35 U.S.C. 133, 37 CFR 1.137(a) or 37 CFR 2.66(a). See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 CFR 1.10(c) in order to grant filing date to patent application, where applicant failed to produce "Express Mail" customer receipt or any other evidence that application was actually deposited with USPS as "Express Mail."), aff 'd without opinion, 95 F.3d 1166 (Fed. Cir. 1996); Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d

1778, 1782 (D.D.C. 1994) (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant priority filing date to patent applica-tion not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183.); Vincent v. Mossinghoff, 230 USPQ 621 (D.D.C. 1985) (misunderstanding of 37 CFR 1.8 not unavoidable delay in responding to Office Action); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pat. 1985) (counsel's unawareness of 37 CFR 1.8 not extraordinary situation warranting waiver of a rule); In re Chicago Historical Antique Automobile Museum, Inc., 197 USPQ 289 (Comm'r Pat. 1978) (since certificate of mailing procedure under 37 CFR 1.8 was available to petitioner, lateness due to mail delay not deemed to be extraordinary situation).

In addition, the Request for Reconsideration filed September 23, 2010 was filed in response to the decision of the Office of PCT Legal Administration mailed on August 17, 2010. Applicants may not now, under the PTA statute and rules, request the Office of Petitions reconsider the decision of the Office of PCT Legal Administration.

Extraordinary relief will not be considered where the rules of practice already provide an avenue for relief. It is brought to petitioner's attention that the USPTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See, Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). Here, applicant's avenue of relief was to request the Office of PCT Legal Administration reconsider its decision. 37 CFR 1.4(c) requires that since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

Further in this regard, a standard principle of statutory construction is: expressio unius est exclusion alterius (the mention of one thing implies exclusion of another thing), namely, absent legislative intent to the contrary, when a statute expressly provides a specific remedy for a specific situation, the statute is deemed to exclude other remedies for such situation. See, National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers, 414 U.S. 453, 458 (1974); see, also, Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929) ("when a statute limits a thing to be done in a particular mode, it includes the negative of any other mode"). That is, the patent statute and regulations provide a specific mechanism whereby an applicant may petition the USPTO to reconsider a decision on petition. Since there is a specific mechanism in place to remedy the requested relief, then it is inappropriate for the USPTO to contemplate circumventing that mechanism by creating another remedy. To now file a patent term adjustment petition requesting consideration of the petition already decided on its merits by the Office of PCT Legal Administration amounts to forum shopping.

Conclusion

As to the contention that the Office should recognize a 371(c) filing date for the present application as March 21, 2007, the decisions of August 17, 2010 and January 6, 2011 properly

addressed applicants arguments, and concluded that the date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) is **02 December 2009.** The Office appropriately used December 2, 2009 in calculating the patent term adjustment under 37 CFR 1.702(a)(1), and no adjustment pursuant to 35 U.S.C. 154(b)(1)(A) is appropriate.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance remains zero (0) days, subject to any terminal disclaimer.

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, including any request as it relates to the Office's failure to issue the patent within 3 years of the filing date, 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. 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 Attorney Derek L. Woods at (571) 272-3232.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

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DEC 02 2010

OFFICE OF PETITIONS

In re Application of :
Ojala :
Application No. 10/574,990 : ON APPLICATION FOR
Filed: January 8, 2007 : PATENT TERM ADJUSTMENT
Atty Docket No. **088245-0809** :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed November 23, 2010. Applicants submits that the patent term adjustment to be indicated on the patent is one thousand, ninety-five (1,095) days, not seven hundred forty-six (746) 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].

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).

---

[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) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

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WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE, TN 37203

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FEB 01 2011
OFFICE OF PETITIONS

In re Application of
Thomas MANNEBACH, et *al.*
Application No. 10/575,086
Filed: April 10, 2006
Attorney Docket No. **002097**

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

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 31, 2011, 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 26, 2011 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 3672 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

[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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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

MAILED
SEP 28 2010
OFFICE OF PETITIONS

In re Application of	:	
Jue-Lon Shie et al.	:	
Application No. 10/575,127	:	DECISION ON PETITION
Filed: June 11, 2007	:	
Attorney Docket No. **01948/101002**	:	

This is a decision on the petition under 37 CFR 1.182, filed September 1, 2010, to change the order of the names of the inventors.

The petition is **GRANTED**.

Office records have been corrected to reflect the change in the order of the named inventors. A corrected Filing Receipt, which sets forth the desired order of the named inventors, accompanies this decision on petition.

A petition under 37 CFR 1.182 requires a fee under 37 CFR 1.17(f) of $400. Petitioner only authorized for $130 for the payment of the petition fee; therefore, the balance of $270 will be charged to petitioner's deposit account as authorized.

This application is being referred to the Office of Data Management for normal course of business.

Telephone inquiries regarding this decision should be directed to the undersigned at 571-272-4584.

/JoAnne Burke/
JoAnne Burke
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
10/575,127	06/11/2007	1636	1165	01948/101002	19	11

CONFIRMATION NO. 1967

CORRECTED FILING RECEIPT

21559
CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

OC000000043727542

Date Mailed: 09/28/2010

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)

Jian Li, Chestnut Hill, MA;
Jue-Lon Shie, Acton, MA;
Roger J. Laham, Brookline, MA;

Power of Attorney: The patent practitioners associated with Customer Number 21559

Domestic Priority data as claimed by applicant

This application is a 371 of PCT/US04/33735 10/12/2004
which claims benefit of 60/510,437 10/10/2003

Foreign Applications

If Required, Foreign Filing License Granted: 03/05/2008

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/575,127**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

METHODS AND COMPOSITIONS FOR TREATING CONDITIONS INVOLVING ABNORMAL ANGIOGENESIS

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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FAY SHARPE LLP
1228 Euclid Avenue, 5th Floor
The Halle Building
Cleveland OH 44115

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OFFICE OF PETITIONS

In re Application of	:	
Jouku Savolainen	:	
Application No. 10/575,156	:	DECISION ON PETITION
Filed: April 6, 2006	:	
Attorney Docket No. LOYZ 200004US01	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, March 15, 2010, 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 September 16, 2010. A Notice of Abandonment was mailed on March 22, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $405, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the RCE 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 1781 for appropriate action by the Examiner in the normal course of business on the replies received on September 14, 2010 and September 30, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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FEB 07 2011

PCT LEGAL ADMINISTRATION

CONTINENTAL TEVES, INC.
ONE CONTINENTAL DRIVE
AUBURN HILLS MI 48326-1581

In re Application of :
HELLDORFER, Reinhard et al. :
Application No.: 10/575,200 :
PCT No.: PCT/DE2004/002236 :
Int. Filing Date: 08 October 2004 : DECISION
Priority Date: 09 October 2003 :
Docket No.: TM023 :
For: DEVICE FOR ACTIVATING A :
SECURITY SYSTEM IN A VEHICLE :

This decision is in response to applicant's 06 March 2008 submission of a declaration of the inventors.

The declaration of the inventors is not a USPTO form, but it bears a USPTO form number. The certification under 37 CFR 10.18(b) in the 06 March 2008 declaration is invalid. The declaration is being treated as unsigned correspondence.

An oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) is required within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available. Failure to timely reply will result in the abandonment of this application.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Erin P. Thomson/

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292

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22ND FLOOR
CHICAGO, IL 60606

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In re Application of :
Daisuke Kumaki et al :
Application No. 10/575,202 : ON PETITION
Filed: April 10, 2006 :
Attorney Docket No. LIGHT-EMITTING ELEMENT AND LIGHT-EMITTING DEVICE

This is a decision on the petition, filed April 15, 2011 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 16, 2011 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 2815 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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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John B. Hardaway
Nexsen Pruet
P.O. Box
Greenville SC 29603

MAILED

SEP 21 2010

OFFICE OF PETITIONS

In re Application of	:	
Wilfried Erb, et al.	:	
Application No. 10/575,212	:	DECISION ON PETITION
Filed: July 7, 2006	:	
Attorney Docket No. 25045-17	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 25, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the Notice Requiring Excess Claims Fees mailed, November 13, 2009, 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 December 14, 2009. The Notice of Abandonment was mailed August 11, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a supplemental amendment cancelling excess claims, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 1783 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
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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KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON, DC 20007-5118

MAILED

JAN 05 2011

OFFICE OF PETITIONS

In re Application of
James E. VAN BUSKIRK
Application No. 10/575,278
Filed: April 10, 2006
Attorney Docket No. **32792-CIP-01**

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 28, 2009.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address. Specifically, pursuant to 37 CFR 10.40, the Office will require the practitioner(s) to certify that he, she or they have:

> **(1) given reasonable notice to the client, prior to the expiration of the reply period, that the practitioner(s) intends to withdraw from employment;**
>
> (2) delivered to the client or 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 replies that may be due and the time frame within which the client must respond.**

Petitioner has not complied with items (1) and (3) of the above certifications.

Further, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71*, or if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71 (c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73 (b) that is signed by a party who is authorized to act on behalf of the assignee.

The Office will also no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

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

Inquires concerning either the examination or status of the application should be directed to the Technology Center at 571-272-1700.

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

cc: **GARRITAN CORPORATION**
257 LAPORTE, BOX 400
ORCAS, WA 98280

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

MAILED
SEP 09 2011
OFFICE OF PETITIONS

In re Application of	:	
VAN BUSKIRK	:	
Application No. 10/575,278	:	DECISION ON PETITION
Filed: March 5, 2007	:	TO WITHDRAW
Attorney Docket No. 281450-00212	:	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, 2011.

The request is **DISMISSED**.

The request to withdraw from record cannot be approved because the request to change the correspondence address is not acceptable. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71 states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement incompliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

According to a review of USPTO records, there is currently no Statement under 37 CFR 3.73 of record in the instant application. In this regard, the Office cannot change the correspondence address to the address indicated on the Request to Withdraw filed January 13, 2011.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

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

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: GARRITAN CORPORATION
257 LAPORTE, BOX 400
ORCAS WA 98280

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OFFICE OF PETITIONS

KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

In re Application of	:	
VAN BUSKIRK	:	
Application No. 10/575,278	:	DECISION ON PETITION
Filed: March 5, 2007	:	TO WITHDRAW
Attorney Docket No. 281450-00212	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 21, 2011.

The request is **DISMISSED**.

The request to withdraw from record cannot be approved because the request to change the correspondence address is not acceptable. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71 states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement incompliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

According to a review of USPTO records, there is currently no Statement under 37 CFR 3.73 in the instant application that indicates Garritan Corporation has properly been made of record. In this regard, the Office cannot change the correspondence address to the address indicated on the Request to Withdraw filed September 21, 2011.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

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

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: GARRITAN CORPORATION
257 LAPORTE, BOX 400
ORCAS WA 98280

cc: JOHN S. PANIAGUAS
525 W. MONROE STREET
CHICAGO IL 60661-3693

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO, IL 60606-6357

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FEB 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Thomas FRIEDLAENDER, et *al.*	:	
Application No. 10/575,313	:	DECISION GRANTING PETITION
Filed: September 21, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **30071/41841**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 31, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 18, 2011 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 1765 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.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 11/12/10

TO SPE OF : ART UNIT 2891

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/575489 Patent No.: 7709282 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: _____

K Bryant 2891

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ALEXANDRIA, VA 22313-1450
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Paper No.

MCCORMICK, PAULDING & HUBER LLP
CITY PLACE II
185 ASYLUM STREET
HARTFORD CT 06103

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Blumberg et al.	:	
Application No. 10/575,532	:	ON APPLICATION FOR
Filed: April 12, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. 7701-0001WOUS	:	
Title: NEUTRAL DATA COMPUTER	:	
CONTROL SYSTEM FOR A MACHINE	:	
TOOL USED TO PRODUCE	:	
WORKPIECES WITH A THREADED	:	
SURFACE AND ASSOCIATED	:	
MACHINE TOOL	:	

This is in response to the "REQUEST MADE UNDER 37 CFR 1.705(b) FOR REVISION OF PATENT TERM ADJUSTMENT," filed April 29, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is four hundred and ninety (490) days, not one hundred and fifty-five (155) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent. In addition, Applicants contend that one period of applicant delay was miscalculated.

However, prior to a decision on the letter regarding patent term adjustment being rendered, on June 18, 2010, Applicants filed a petition to withdraw from issue along with a request for continued examination (RCE). By decision mailed June 21, 2010, the withdrawal from issue was granted. Prosecution was reopened.

A Notice of Allowance and Fee(s) Due was mailed on March 12, 2010, along with a Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) which indicates that the Patent Term Adjustment to date is 155 days.

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 cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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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

To the extent that Applicants otherwise request reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the request is **DISMISSED**.

Applicants state that any patent issuing from the application is subject to a terminal disclaimer.[2]

Rule 1.704(c)(7) sets forth, in toto:

> 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 reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed

A non-final Office action was mailed on March 31, 2008, and a response was received on May 30, 2008. A "Notice of Non-compliant Amendment (37 CFR 1.121)" was mailed on June 23, 2008, and on July 23, 2008, 54 (not 53) days after the initial reply of Mary 30, 2008 was submitted, a response was received. As such, a reduction of 54 (not 53) days was assessed.

It follows that the reduction of 54 days was properly calculated.

The $200.00 fee under 37 C.F.R. § 1.18(e) will be charged to Deposit Account No. 13-0235 in due course. No additional fees are required.

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on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then Applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

[2] Petition, page 2.

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).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and Applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to Applicants approximately three weeks prior to issuance.

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

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski (571) 272-3225.

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 06/10/11

TO SPE OF : ART UNIT: **1723 Attn: NECKEL ALEXA D (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/575556 Patent No.: 7780747

CofC mailroom date: 12/21/10

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

Note: Please check Related U.S. Application Data

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

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: Related US Application data on PTOL SB/44 should be printed on the cover page of the patent.

SPE

1723
Art Unit

13 AUG 2010

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P.O. Box 1450
Alexandria, VA 22313-1450
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THE FARRELL LAW FIRM, LLP
290 BROADHOLLOW ROAD
SUITE 210E
MELVILLE, NY 11747

In re Application of CHOI Serial No.: 10/575,593 PCT App. No.: PCT/KR04/01191 Int'l Filing Date: 19 May 2004 Priority Date: 11 October 2003 Attorney Docket No.: 1365-4PCT US For: VACUUM FIXER	DECISION ON PETITION UNDER 37 CFR 1.181

This is a decision on applicant's "Petition to Withdraw the Holding of Abandonment Based on Failure to Receive Office Action Under 37 CFR 1.181(a)", filed on 30 December 2009 in the US Patent and Trademark Office. No petition fee is required.

BACKGROUND

On 11 April 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 30 October 2006, the Office mailed a Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903).

On 05 February 2009, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 23 November 2009, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating, that the application went abandoned for failure to respond to the Notification of Missing Requirements mailed 05 February 2009.

On 30 December 2009, applicant filed the present petition requesting that the Office withdraw the holding of abandonment because applicant did not receive the Notification of Missing Requirements.

DISCUSSION

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. No petition fee is required.

As set forth in MPEP Section 711.03(c):

[T]he 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.

The 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.

Practitioner makes the statement that the Office action was not received by the practitioner and describes the system used for recording an Office action received at the correspondence address of record with the USPTO.

In addition, 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 and was provided. Applicant submitted a copy of the file jacket, which did not indicate that the Notification was not entered into this record. The Master Docket for the period 1/29/2009-2/12/2009 was submitted. However, this is not the period at issue. The master docket record showing all due date entries for the response due date of 05 April 2009 is required to show that applicant did not receive a copy of the Notification of Missing Requirements as set forth in MPEP 711.03(c)IA. Thus, applicant has not yet provided the proper showing necessary to withdraw the holding of abandonment as explained above.

An executed declaration was submitted on 30 December 2009. Therefore, the 30 October 2006 Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 15 September 2006 is incorrect and is hereby **VACATED**.

CONCLUSION

For the reasons above, Applicant's petition under 37 CFR 1.181 to request to withdraw holding of abandonment is **DISMISSED WITHOUT PREJUDICE**.

The 30 October 2006 Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903) is hereby **VACATED**.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within TWO (2) MONTHS from the mail date of this decision.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Cynthia M. Kratz/
Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Office of PCT Legal Administration

Telephone:(571) 272-3286

UNITED STATES PATENT AND TRADEMARK OFFICE

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PCT LEGAL ADMINISTRATION

THE FARRELL LAW FIRM, LLP
290 BROADHOLLOW ROAD
SUITE 210E
MELVILLE, NY 11747

In re Application of CHOI Serial No.: 10/575,593 PCT App. No.: PCT/KR04/01191 Int'l Filing Date: 19 May 2004 Priority Date: 11 October 2003 Attorney Docket No.: 1365-4PCT US For: VACUUM FIXER	DECISION ON PETITION UNDER 37 CFR 1.181

This is a decision on applicant's "Request for Reconsideration of Petition to Withdraw the Holding of Abandonment Based on Failure to Receive Office Action Under 37 CFR 1.181(a)", filed on 20 September 2010 in the US Patent and Trademark Office. No petition fee is required.

BACKGROUND

On 11 April 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 30 October 2006, the Office mailed a Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903).

On 05 February 2009, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 23 November 2009, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating, that the application went abandoned for failure to respond to the Notification of Missing Requirements mailed 05 February 2009.

On 30 December 2009, applicant filed a petition requesting that the Office withdraw the holding of abandonment because applicant did not receive the Notification of Missing Requirements.

On 13 August 2010, a decision dismissing the petition was mailed to applicant.

DISCUSSION

MPEP Section 711.03(c), Section I. A., "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" states in relevant part:

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.

The 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.

Practitioner stated that the Notification of Missing Requirements was not received and that a search of the practitioner's records, including any file jacket or equivalent, revealed that the Notification of Missing Requirements was not received. The petition includes an adequate description of the firm's system for recording an Office action received at the correspondence address of record, establishing that the system is sufficiently reliable. Furthermore, the renewed petition includes a master docket report showing all replies docketed for a date two months from the mail date of the Notification of Missing Requirements. These copies are sufficient to show that applicant did not receive a copy of the Notification of Missing Requirements as set forth in MPEP 711.03(c)IA. Thus, applicant provided the proper showing necessary to withdraw the holding of abandonment as explained above and the petition is granted.

CONCLUSION

For the reasons above, Applicant's petition under 37 CFR 1.181 to request to withdraw holding of abandonment is **GRANTED**.

The Notification of Abandonment mailed on 23 November 2009 is hereby **VACATED**.

The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371 (c)(1), (c)(2) and (c)(4) date is 30 December 2009.

/Cynthia M. Kratz/
Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Office of PCT Legal Administration
Telephone:(571) 272-3286

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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JUN 01 2011
OFFICE OF PETITIONS

BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN NC 28562

In re Application of	:	
Egbert Classen	:	
Application No. 10/575,613	:	ON PETITION
Filed: April 11, 2006	:	
Attorney Docket No. 2003P01494WOUS	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 11, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, March 9, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 10, 2010. A Notice of Abandonment was mailed on December 28, 2010.

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 $1,620, and (3) a proper statement of unintentional delay. Accordingly, the Notice of Appeal and Appeal Brief are 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.

This application is being referred to the Board of Patent Appeals and Interferences for processing of the response in the normal course of business.

/Kimberly Inabinet/

Kimberly Inabinet
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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UNISYS CORPORATION
OFFICE OF THE GENERAL COUNSEL
801 LAKEVIEW DRIVE, SUITE 100
MAILSTOP: 2NW
BLUE BELL PA 19422

MAILED
JAN 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Landis et al.	:	
Application No. 10/575,632	:	DECISION ON PETITION
Filed: April 7, 2006	:	
Attorney Docket No. 10/666,000/TN333A	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 12, 2010, 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 August 13, 2010. A Notice of Abandonment was mailed December 6, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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 $1,110.00, three- month extension of time fee submitted with the petition on January 6, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's deposit account in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 2448 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

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ROBERT D. SHEDD, PATENT OPERATION
THOMSON LICENSING, LLC
PO BOX 5312
PRINCETON, NJ 08543-5312

MAILED
FEB 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Jill McDonald Boyce, et al.	:	
Application No. 10/575,676	:	DECISION GRANTING PETITION
Filed: October 25, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. PU030282	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 4, 2011, 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 20, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

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.

/AMW/
April M. Wise
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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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,683	08/31/2006	Hyunsil Han	196034542	4626

26774 7590 09/27/2010
NIXON PEABODY LLP - PATENT GROUP
1100 CLINTON SQUARE
ROCHESTER, NY 14604

EXAMINER
JAVANMARD, SAHAR

ART UNIT	PAPER NUMBER
1627	

MAIL DATE	DELIVERY MODE
09/27/2010	PAPER

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

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

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SEP 2 7 2010

NIXON PEABODY LLP - PATENT GROUP
1100 CLINTON SQUARE
ROCHESTER NY 14604

In re Application of:	:
Han et al.	:
Serial No.: 10/575,683	: PETITION DECISION
Filed: August 31, 2008	:
Attorney Docket No.: **196034542**	:

This is in response to the petition under 37 CFR § 1.181, filed June 23, 2010, requesting that the finality of the Office action of April 23, 2010 be withdrawn. The delay in responding to this petition is regretted but it has only just come to the attention of the Deciding Official.

BACKGROUND

The examiner mailed a non-final Office action on June 15, 2009 setting a three month statutory limit for reply. At the time of this non-final Office action, claims 1-48 were pending. The examiner withdrew claims 1-23, 25-31, 34-41 and 45-48 from consideration. The examiner rejected claims 24 and 44 under 35 USC 103 (a) as being unpatentable over Yamamoto as evidenced by the Medilexicon medical dictionary in view of Mitchell. Claims 32, 33, 42 and 43 were objected to.

In reply to the non-final Office action of 15, 2009, applicants filed a response on December 15, 2009. The response submitted by applicants included arguments traversing the rejections made in the non-final Office action.

On April 23, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this final Office action, claims 1-48 were still pending. The examiner again rejected claims 24 and 44 under 35 USC 103 (a) as being unpatentable over Yamamoto as evidenced by the Medilexicon medical dictionary in view of Mitchell. Claims 32, 33, 34-41 and 42-43 were objected to.

In response thereto, applicants filed this petition on June 23, 2010, requesting that the finality of the Office action of April 23, 2010 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed by applicants on June 23, 2010, applicants request that the finality of the Office action of April 23, 2010 be withdrawn. Applicants argue " The MPEP § 706.02 states (emphasis added): When an abstract is used to support a rejection, the evidence relied upon is the facts contained in the abstract, not additional facts that may be contained in the underlying full text document. Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally inappropriate where both the abstract and the underlying document are prior art. See *Ex parte Jones,* 62 USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished). To determine whether both the abstract and the underlying document are prior art, a copy & the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, *a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection."* Applicants further argue " It is clear that the June 15, 2009, non-final office action did not comply with the provisions of MPEP § 706.02. That action only provided applicants with a copy of Yamamoto which was entirely in Japanese except for the English language abstract. However, it is apparent from the June 15, 2009, non-final office action that the examiner was relying on more than just the English language abstract of this reference. In particular, in referring to substituents of a chemical structure, which are nowhere to be found in the abstract of Yamamoto, it is clear that the examiner was referring to either the Japanese text of this reference and/or an English language translation of it. However, by not providing such a translation, the June 15, 2009, office action not only failed to comply with MPEP § 706.02, but deprived applicants of an opportunity to fully understand Yamamoto and respond to that office action."

Applicants' arguments are well taken and persuasive that the examiner relied on a full translation at the time of the final Office action which amounts to a new reference being applied at the time of final rejection. Consequently, applicants have not been provided a fair opportunity to carefully consider and respond to this complete reference. Also, MPEP § 706.07 recites:

> 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).

Thus, it is *not* proper for an office action to be made final when the examiner introduces a new ground of rejection based on a translated document 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). Accordingly, it is decided that Applicants' arguments are well-taken and found persuasive.

DECISION

The petition is **GRANTED.**

The Office action mailed April 23, 2010 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Remy Yucel
Director, Technology Center 1600

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GLOBAL PATENT GROUP - CBX
1005 WARSON ROAD
SUITE 201
ST. LOUIS, MO 63132

MAILED
MAR 10 2011
OFFICE OF PETITIONS

In re Application of
Karin Ekberg, et al.
Application No. 10/575,701
Filed: December 11, 2006
Attorney Docket No.: CBX0007-506-US

ON PETITION

This is a decision in response to the petition under 37 CFR 1.182, filed March 8, 2011, requesting expedited consideration of the January 25, 2011 petition to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition under 37 CFR 1.182 is **GRANTED**. A decision on the petition under 37 CFR 1.137(b) follows.

A review of the record discloses that the application became abandoned for a failure to timely pay the issue and publication fees on or before September 16, 2010, as required by the Notice of Allowance and Fee(s) Due mailed June 16, 2010. Consequently, on October 6, 2010, a Notice of Abandonment was mailed. On January 25, 2011, the present petition was filed.

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).

It is initially pointed out that a terminal disclaimer, including fee, is not required in this application. Receipt is acknowledged of the required reply in the form of the $1,510 issue fee and $300 publication fee and the $1,620 petition fee has been paid; however, the petition does not contain a proper statement of unintentional delay as noted in item (3) above.

Accordingly, the petition under 37 CFR 1.137(b) 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.

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 decision may be directed to the undersigned at (571) 272-3204.

/SDB/

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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MAY 13 2011
OFFICE OF PETITIONS

GLOBAL PATENT GROUP - CBX
1005 WARSON ROAD
SUITE 201
ST. LOUIS, MO 63132

In re Application of Karin Ekberg, et al. Application No. 10/575,701 Filed: December 11, 2006 Attorney Docket No.: CBX0007-506-US	: : : : :	ON PETITION

This is a decision on the renewed petition, filed April 26, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before September 16, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 16, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 17, 2010. A Notice of Abandonment was subsequently mailed on October 6, 2010. A petition under the provisions of 37 CFR 1.137(b) was filed on January 25, 2011; however, the petition was dismissed in a decision mailed March 9, 2011. On April 26, 2011, the present petition was filed.

The petitions satisfy the requirements of 37 CFR 1.137(b) in that petitioners have supplied (1) the reply in the form of the $1,510 issue fee and $300 publication fee; (2) the petition fee of $1,620; 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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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE STREET
EXCHANGE PLACE
BOSTON MA 02109-2881

MAILED

JAN 12 2011

OFFICE OF PETITIONS

In re Application of	:	
Pinto	:	
Application No. 10/575,745	:	ON APPLICATION FOR
Filed: April 9, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. BYG-101	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(b), filed October 28, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is eight hundred thirty-six (836) days[1], not one hundred ninety-four (194) 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). 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.

[1] This calculation is based on a projected issuance date of April 12, 2011.

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 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 he 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[2].

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.

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[2] For example, if an 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.

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

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THOMAS R. VIGIL LAW OFFICES
319 BLUFF COURT
BARRINGTON IL 60010

MAILED

NOV 28 2011

OFFICE OF PETITIONS

In re Patent No. 7,546,751 :
Issue Date: June 16, 2009 :
Application No. 10/575,766 : ON PETITION
Filed: December 19, 2006 :
Attorney Docket Number: VMP-40008 :

This is a decision on the petition, filed November 15, 2011, under, 37 CFR 1.182, requesting the issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

Since it is U.S. Patent and Trademark Office practice to assure mailing of all papers on the date indicated, there is a strong presumption that papers duly addressed and indicated as mailed, such as the Letters Patent in this application, are timely delivered to the addressee. To overcome this presumption, a verified statement with supporting evidence, such as any records which would disclose the receipt of other correspondence mailed from the U.S. Patent and Trademark Office on or about June 16, 2009, but fail to disclose receipt of the Letters Patent mailed on that date, should be promptly submitted. Further, copies of records on which receipt of the Letters Patent would have been entered had it been received are required.

However, if the loss of the Letters Patent was not the fault of the U.S. Patent and Trademark Office or if petitioner simply wishes to avoid overcoming the above-noted presumption, a petition may be filed under 37 CFR 1.182 accompanied by a petition fee of $400.00 requesting a duplicate Letters Patent. Upon receipt of the petition and petition fee, the request for a duplicate Letters Patent will be granted.

As the petition and a fee of $400.00, charged to deposit account no. 50-4041, have been received, the petition is granted.

A copy of this decision is being forwarded to Office of Data Management for issuance of a duplicate Letters Patent.

The Office of Data Management is directed to issue a duplicate Letters Patent. Telephone inquiries concerning this decision may be directed to the undersigned Senior Petitions Attorney at (571) 272-3212. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to the Office of Data Management at (703) 308-9250.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc: Ollie Person (Fax – (571) 270-9764)
Kimberly Terrell (Fax – (571) 270-9958)

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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NOV 08 2010
OFFICE OF PETITIONS

In re Application of	
Patrick Lewis Blott et al	
Application No. 10/575,871	DECISION GRANTING PETITION
Filed: April 17, 2006	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SMNPH.005APC	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 4, 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 October 1, 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) 272-3208.

This application is being referred to Technology Center AU 3772 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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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

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AUG 18 2010

OFFICE OF PETITIONS

In re Application of
Ekkehard Werner
Application No. 10/575,962
Filed: April 14, 2006
Attorney Docket No. 085449-0190

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 21, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an election; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Restriction Requirement Office action mailed July 16, 2009, 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 1637 for appropriate action by the Examiner in the normal course of business on the reply received May 21, 2010.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
S1	0	"7165318.pn"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 11:16
S2	0	"7165318.pn."	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 11:16
S3	2	"7165318".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 11:16
S4	2	"6261097".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 11:31
S5	4	"7101137".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 13:51
S6	2	"7165318".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 13:54
S7	2	"7044303".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 13:54
S8	0	0681795A2.pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 15:14
S9	0	681795A2.pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2009/07/06 15:14
S10	0	681795A2.pn.	EPO	OR	ON	2009/07/06 15:15
S11	1	"681795".pn.	EPO	OR	ON	2009/07/06 15:15
S12	0	"0230315".pn.	EPO	OR	ON	2009/07/06 15:17

S13	1	"230315".pn.	EPO	OR	ON	2009/07/06 15:17
S14	0	"20030221977".pn.	EPO	OR	ON	2009/07/06 15:19
S15	0	"20030221977A1".pn.	EPO	OR	ON	2009/07/06 15:19
S16	0	"20030221977".pn.	EPO	OR	ON	2009/07/06 15:19
S17	1	"20030221977".pn.	US-PGPUB; USPAT; EPO	OR	ON	2009/07/06 15:19
S18	1	"0230315".pn.	US-PGPUB; USPAT; EPO	OR	ON	2009/07/06 19:05
S19	2220	433/173	US-PGPUB; USPAT; EPO	OR	ON	2009/07/06 19:06

EAST Search History (Interference)

<This search history is empty>

12/29/2010 11:32:58 AM
H:\package for preserving a medical device or the like.wsp

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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QUINE INTELLECTUAL
PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Application of :
Alfonta, et al. :
Application No. 10/575,991 :
Filed: 13 March, 2006 :
Attorney Docket No: 54-000711US :

DECISION

This is a decision on the petition filed on 21 June, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application, alternatively pleaded as a "contingent" petition pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

NOTE:

Petitioner appears to have ignored the guidance in the Commentary at MPEP §711.03(c) at to the showing requirements regarding the relief sought herein.

Petitioner is respectfully requested to:

- review the guidance in the Commentary at MPEP §711.03(c) as to the showing required in this matter;
- provide the express statements outlined; and
- provide the two brief documents required.

Petitioners always are reminded that those registered to practice **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to inquire and disclose.[1] Registered practitioners do not satisfy this requirement simply by placing into the statements others the required showings herein.

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

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**; and the petition pursuant to 37 C.F.R. §1.137(b) 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 C.F.R. §1.181" or "Renewed Petition under 37 CFR §1.137(b)."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

It appears that Petitioner has not satisfied the fee requirements pursuant to the regulations at 37 C.F.R. §1.137(b).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 13 November, 2009, with reply due absent extension of time on or before 13 January, 2010.

The application went abandoned by operation of law after midnight 13 January, 2010.

The Office mailed the Notice of Abandonment on 1 June, 2010.

On 21 June, 2010, Petitioner Gary Baker (Reg. No. 41,595) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, non-receipt of the Office action but failed to make the statements and documentary showing as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—including the required copy of the application docket sheet Petitioner's office due date calendar for the due date of the reply. Petitioner failed to make the statements, *inter alia*:

- non-receipt at the correspondence address of record;
- search (of the file, docket and calendar) and non-discovery with description of the docketing system;
- sufficient reliability with a showing/statement that the due date calendar is that for Petitioner's office/firm, all to ensure, *inter alia*, that the Office action herein had not been misfiled.

Further, Petitioner stated that he was including a "contingent" petition pursuant to 37 C.F.R. §1.137(b) and averred inclusion of fees, but the record is silent as to any indication that fees were paid and there was no deposit account or other authorization provided for fees. Petitioner included a reply in the form of an amendment and made a statement of unintentional delay.

It is noted that the form for a petition pursuant to 37 C.F.R. §1.137(b) is available at the Office website and includes a checklist of required elements and Petitioner might find it beneficial to utilize those assistances as provided by the Office.

Thus, Petitioner has not completed the showing as discussed below in the citation from the Manual of Patent Examining Procedure (MPEP).

Petitioner is directed to the appropriate guidance (MPEP §711.03(c)), and requested to comply with it.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

***

> 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.[2]

***

Alternatively, the requirements for a petition pursuant to 37 C.F.R. §1.137(b) have been set forth above and are set forth again below for Petitioner's information.

Out of an abundance of caution, Petitioners always are reminded that:

- the filing of a petition pursuant to 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)); and

- those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to inquire and disclose.[3]

---

[2] *See*: MPEP §711.03(c) (I)(A).

[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88

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

STATUTES, REGULATIONS

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

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[4],[5]

Allegations as to the Request to Withdraw the Holding of Abandonment

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

Petitioner appears not to have made the showing required.

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have not been satisfied.

---

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).

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

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

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**; and the petition pursuant to 37 C.F.R. §1.137(b) is **dismissed**.

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

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

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

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

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

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

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

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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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QUINE INTELLECTUAL
PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

MAILED
JAN 03 2011
OFFICE OF PETITIONS

In re Application of :
Alfonta, et al. :
Application No. 10/575,991 :
Filed: 13 March, 2006 :
Attorney Docket No: 54-000711US :

DECISION

This is a decision on the petition filed on 5 October, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application, alternatively pleaded as a "contingent" petition pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

NOTE:

For the second time Petitioner appears to have ignored the guidance in the Commentary at MPEP §711.03(c) at to the showing requirements regarding the relief sought herein.

Petitioner is respectfully requested to:

- review the guidance in the Commentary at MPEP §711.03(c) as to the showing required in this matter;
- provide the express statements outlined therein; and
- provide the two brief documents required.

Petitioners always are reminded that those registered to practice **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to inquire and disclose.[1] Registered practitioners do not satisfy this requirement simply by placing into the statements others the required showings herein.

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

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The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**; and the petition pursuant to 37 C.F.R. §1.137(b) 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 C.F.R. §1.181" or "Renewed Petition under 37 CFR §1.137(b)."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

It appears that Petitioner has not satisfied the fee requirements pursuant to the regulations at 37 C.F.R. §1.137(b).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

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Petitioner failed to reply timely and properly to the non-final Office action mailed on 13 November, 2009, with reply due absent extension of time on or before 13 January, 2010.

The application went abandoned by operation of law after midnight 13 January, 2010.

The Office mailed the Notice of Abandonment on 1 June, 2010.

On 21 June, 2010, Petitioner Gary Baker (Reg. No. 41,595) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, non-receipt of the Office action but failed to make the statements and documentary showing as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—including the required copy of the application docket sheet Petitioner's office due date calendar for the due date of the reply. Petitioner failed to make the statements, *inter alia*:

- non-receipt at the correspondence address of record;
- search (of the file, docket and calendar) and non-discovery with description of the docketing system;
- sufficient reliability with a showing/statement that the due date calendar is that for Petitioner's office/firm, all to ensure, *inter alia*, that the Office action herein had not been misfiled.

Further, Petitioner stated that he was including a "contingent" petition pursuant to 37 C.F.R. §1.137(b) and averred inclusion of fees, but the record is silent as to any indication that fees were paid and there was no deposit account or other authorization provided for fees. Petitioner included a reply in the form of an amendment and made a statement of unintentional delay.

The petitions were dismissed on 17 August, 2010.

On 5 October, 2010, Petitioner re-advanced the petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, non-receipt of the Office action but failed to make the statements and documentary showing as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—including the required copy of the application docket sheet Petitioner's office due date calendar for the due date of the reply. Petitioner failed to make the statements, *inter alia*:

- non-receipt <u>at the correspondence address of record</u>;
- sufficient reliability with a showing/statement that the due date calendar is that for Petitioner's office/firm, all to ensure, *inter alia*, that the Office action herein had not been misfiled.

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Further, Petitioner stated that he was including a "contingent" petition pursuant to 37 C.F.R. §1.137(b) with fee and reply in the form of an amendment and made a statement of unintentional delay.

Because the Office wishes to allow Petitioner to complete his showing (if he is able) as to the petition pursuant to 37 C.F.R. §1.181, and not simply charge Petitioner for a petition the petition pursuant to 37 C.F.R. §1.137(b), the Office requests that Petitioner review and seek to satisfy the guidance requirements as set forth in the Commentary at MPEP §711.03(c)(I).

Thus, Petitioner has not completed the showing as discussed below in the citation from the Manual of Patent Examining Procedure (MPEP).

Petitioner is directed to the appropriate guidance (MPEP §711.03(c)), and requested to comply with it.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

***

> 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;

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calendar; reminder system; or the individual docket record for the application in question.[2]

***

Alternatively, the requirements for a petition pursuant to 37 C.F.R. §1.137(b) have been set forth above and are set forth again below for Petitioner's information.

Out of an abundance of caution, Petitioners always are reminded that:

- the filing of a petition pursuant to 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)); and

- those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to inquire and disclose.

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

STATUTES, REGULATIONS

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

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[4],[5]

---

[2] *See*: MPEP §711.03(c) (I)(A).

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

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

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

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Allegations as to the Request to
Withdraw the Holding of Abandonment

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

Petitioner appears not to have made the showing required.

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have not been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**; and the petition pursuant to 37 C.F.R. §1.137(b) is **dismissed**.

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAR 16 2011

OFFICE OF PETITIONS

QUINE INTELLECTUAL
PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

In re Application of	:	
Alfonta, et al.	:	
Application No. 10/575,991	:	DECISION
Filed: 13 March, 2006	:	
Attorney Docket No: 54-000711US	:	

This is a revised decision on the petition filed on 5 October, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application, alternatively pleaded as a "contingent" petition pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition pursuant to 37 C.F.R. §1.181 is **GRANTED**; and the petition pursuant to 37 C.F.R. §1.137(b) is **DISMISSED**; the decision of 3 January, 2011 is withdrawn.

As to the Request to Withdraw
the Holding of Abandonment

A Petitioner's attentions always are directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief under 37 C.F.R. §1.181.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

A *Petitioner's attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).*

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 13 November, 2009, with reply due absent extension of time on or before 13 January, 2010.

The application went abandoned by operation of law after midnight 13 January, 2010.

The Office mailed the Notice of Abandonment on 1 June, 2010.

On 21 June, 2010, Petitioner Gary Baker (Reg. No. 41,595) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, non-receipt of the Office action but failed to make the statements and documentary showing as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—including the required copy of the application docket sheet Petitioner's office due date calendar for the due date of the reply. Petitioner failed to make the statements, *inter alia*:

- non-receipt at the correspondence address of record;
- search (of the file, docket and calendar) and non-discovery with description of the docketing system;
- sufficient reliability with a showing/statement that the due date calendar is that for Petitioner's office/firm, all to ensure, *inter alia*, that the Office action herein had not been misfiled.

Further, Petitioner stated that he was including a "contingent" petition pursuant to 37 C.F.R. §1.137(b) and averred inclusion of fees, but the record is silent as to any indication that fees were paid and there was no deposit account or other authorization provided for fees. Petitioner included a reply in the form of an amendment and made a statement of unintentional delay.

The petitions were dismissed on 17 August, 2010.

On 5 October, 2010, Petitioner re-advanced the petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, non-receipt of the Office action; while Petitioner did not submit a copy of his docket sheet to accompany his due date calendar, the Office has determined to so construe Petitioner's submissions, and is construing his statements to have complied with the guidance in the Commentary at MPEP §711.03(c)(I)

Further, Petitioner stated that he was including a "contingent" petition pursuant to 37 C.F.R. §1.137(b) with fee and reply in the form of an amendment and made a statement of unintentional delay.

The fee for this petition is refunded *via* deposit account. Should Petitioner later find that the fee was not refunded, Petitioner should direct a request to the Finance Branch with a copy of this decision.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

***

> 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.[1]

***

The requirements for a petition pursuant to 37 C.F.R. §1.137(b) have been set forth above and below.

[1] *See*: MPEP §711.03(c) (I)(A).

Out of an abundance of caution, Petitioners always are reminded that:

- the filing of a petition pursuant to 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)); and

- those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to inquire and disclose.[2]

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

STATUTES, REGULATIONS

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

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

Allegations as to the Request to Withdraw the Holding of Abandonment

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

---

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

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

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

Petitioner appears to have made the showing required.

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that this matter now is moot.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **granted** and the 1 June, 2010; the petition pursuant to 37 C.F.R. §1.137(b) is **dismissed as unnecessary**.

The instant application is released to the Technology Center1600, AU 1656 for further processing in due course.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,995	05/11/2007	Greg H. Crocker	PKT-P1-06(US)	8906

28710 7590 03/29/2011
PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO, IL 60680

EXAMINER
CAMPEN, KELLY SCAGGS

ART UNIT	PAPER NUMBER
3691	

MAIL DATE	DELIVERY MODE
03/29/2011	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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United States Patent and Trademark Office
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MAR 2 9 2011

Peter Trzyna, Esq.
P.O. Box 7131
Chicago, IL 60680

In re Application of CROCKER, GREG H. Application No. 10/575,995 Filed: APRIL 17, 2006 For: COMPUTER SUPPORT FOR MORTGAGE LOCK OPTION	: : : : :	DECISION ON PETITION TO WITHDRAW RESTRICTION REQUIREMENT UNDER 37 CFR 1.181

This is a decision on applicant's Petition to the Commissioner which was filed June 14, 2010 requesting withdrawal of a restriction requirement made in an office action dated May 29, 2008 requesting that the restriction requirement be withdrawn.

The petition is **DISMISSED as moot**.

A review of the record shows that a restriction requirement pursuant to 35 USC 121 and 35 USC 372 based on PCT Rule 13.1 directed to claims 1-45 was mailed on May 29, 2008. Applicant filed a response on December 1, 2008, electing with traverse Group I, claims 1-16. After receipt of Applicant's response, the examiner issued a non-final action on February 18, 2009. In the non-final action, the examiner responded to Applicant's arguments, maintained the restriction requirement and made the restriction requirement final. Applicant then filed a petition on June 14, 2010 requesting the restriction requirement be withdrawn. The Examiner withdrew the restriction requirement in an interview held on March 25, 2011 (copy of Interview Summary attached). Therefore, the petition is dismissed as moot.

Any questions regarding this decision should be directed to Alexander Kalinowski at (571) 272-6771.

Wynn Coggins,
Technology Center Director
Technology Center 3600

SM/ak
3/28/11

Attachment: copy of Interview Summary held March 25, 2011

Interview Summary	Application No.	Applicant(s)	
	10/575,995	CROCKER, GREG H.	
	Examiner	Art Unit	
	KELLY CAMPEN	3691	

All participants (applicant, applicant's representative, PTO personnel):

(1) *KELLY CAMPEN*. (3)_____.

(2) *Peter Trzyna*. (4)_____.

Date of Interview: *25 March 2011*.

Type: a)☒ Telephonic b)☐ Video Conference
c)☐ Personal [copy given to: 1)☐ applicant 2)☐ applicant's representative]

Exhibit shown or demonstration conducted: d)☐ Yes e)☐ No.
If Yes, brief description: _____.

Claim(s) discussed: *1-45*.

Identification of prior art discussed: _____.

Agreement with respect to the claims f)☒ was reached. g)☐ was not reached. h)☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: *See Continuation Sheet*.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Kelly Campen/ Primary Examiner, Art Unit 3691	

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant agreed to cancel corresponding claims to issued claim set in parent (10/867520) which correspond to elected claim set. Examiner agreed to examine non elected claim set subject to applicant submitting amendments to the claim set to more closely focus on inventive concept. Examiner agreed to withdraw the restriction requirement and Applicant agreed to formally withdraw lack of unity petition requirement as petition is now moot. Applicant agreed to cancel superfluous claims and to focus on inventive concept..

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

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Patent No. 7,761,931	:	
Application No. 10/576,001	:	
Filed: May 11, 2006	:	ON PETITION
Issued: July 27, 2010	:	
Attorney Docket No. WSO-47613	:	

This is a decision on the petitions filed July 6, 2010 and July 27, 2010, 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**.

Petitioner has submitted the requisite $130.00 processing fee and the $100.00 Certificate of Correction fee.

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) 272-3206. 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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SEP 28 2010

OFFICE OF PETITIONS

ROBERT E. BUSHNELL & LAW FIRM
2029 K STREET NW
SUITE 600
WASHINGTON DC 20006-1004

In re Application of	:	
Young-Bog Rho, et al.	:	
Application No. 10/576,211	:	DECISION ON PETITION
Filed: April 17, 2006	:	
Attorney Docket No. P57960	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 15, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed July 15, 2009. Accordingly, the date of abandonment of this application is October 16, 2009. The Notice of Abandonment was mailed October 28, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755 and the publication fee of $300, (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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FEB 09 2011
DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

Conrad J. Clark
CLARK & BRODY
1700 Diagonal Road, Suite 510
Alexandria VA 22314

In re Application of:
ZWINGGENBERGER, A. et. al.
Application No. **10/576,238**
Filed: May 05, 2006
Docket No. 70566-0221US
Title: SYSTEM FOR MANAGEMENT OF PROCESSED INSTRUMENTS

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181

This is a decision on petition filed February 04, 2011 under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner to seeks relief from Examiner's action in relation to Notice of Abandonment mailed January 20, 2011, namely, requesting the withdrawal of the notice of abandonment.

This petition is **GRANTED.**

REGULATION AND PROCEDURES

MPEP § 711.03(b) Holding Based on Failure To Reply Within Period

When an amendment reaches the U.S. Patent and Trademark Office after the expiration of the period for reply and there is no dispute as to the dates involved, no question of reconsideration of a holding of abandonment can be presented. However, the examiner and the applicant may disagree as to the date on which the period for reply commenced to run or ends. In this situation, as in the situation involving sufficiency of reply, the applicant may take issue with the examiner and point out to him or her that his or her holding was erroneous

§ 1.136 Extensions of time.

(a) (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or **five months** after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed..

DECISION

Upon careful review of the file prosecution history, the above mentioned abandonment is deemed premature and hereby withdrawn.

For the reason(s) above-mentioned this petition is hereby **granted**.

Notice of Abandonment mailed January 25, 2010 is hereby **withdrawn**.

Application will be forwarded to respective Technical Support Staff for withdrawal of Notice of Abandonment mailed January 25, 2010. Application has been forwarded to examiner for proper treatment of Applicant's response mailed January 18, 2011 and issuance of corresponding office action in due course.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400,
Network, Multiplexing, Cable and Security

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MAR 25 2011

OFFICE OF PETITIONS

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

In re Patent of Gack et al.	:	DECISION ON REQUEST
Patent No. 7,842,464	:	FOR RECONSIDERATION OF
Issue Date: November 30, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/576,266	:	AND NOTICE OF INTENT TO
Filing Date: December 20, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. 097147-0106	:	CORRECTION

This is a decision on the petition filed January 31, 2011, which is being treated as a petition under 37 C.F.R. § 1.705(d). Patentees request that the patent term adjustment indicated in the patent be corrected from five hundred sixteen (516) days to seven hundred thirty-five (735) 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 to to seven hundred thirty-five (735) is **granted to the extent indicated herein**.

On November 30, 2010, the above-identified application matured into U.S. Patent No.7,842,464. The instant request for reconsideration filed January 31, 2011 (a Monday) 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 516 days.

Patentees assert the correct patent term calculation is 231 days of A Delay + 592 days of B Delay – 88 days of Applicant Delay, which equals 735 days.

As a preliminary matter, patentees are correct that the maximum period of B Delay is 592 days. The period is measured beginning on April 18, 2009, the day after three years after commencement, and ending on November 30, 2010, the date of issuance of the patent. The Office incorrectly calculated the period as 593 days.

Patentees argue the Office improperly excluded the 220-day period from the period of B Delay.

If the Office's exclusion of the 220-day time period was improper, the Office would agree the patent term adjustment should be 735 days. However, patentees have failed to establish the exclusion of the 220-day time period was improper.

Pursuant to 35 U.S.C. § 154(b)(1)(B)(ii), B Delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." Patentees argue the period of appellate review does not begin until jurisdiction is transferred to the Board of Patent Appeals and Interferences ("Board") pursuant to 37 C.F.R. § 41.35.

The provisions of 37 C.F.R. § 1.703(b)(4) implement 35 U.S.C. § 154(b)(1)(B)(ii). Pursuant to 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include,

> 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.

The petition asserts 37 C.F.R. § 1.703(b)(4) excludes too many days because the filing of a notice of appeal does not commence the time period of appellate review by the Board.

Although the petition asserts the period of appellate review begins when jurisdiction is transferred to the Board, the petition fails to cite any court decision or legislative history to support such an assertion.

The Office has considered the arguments in the petition and concluded the phrase "time consumed by appellate review by the Board" in 35 U.S.C. § 154(b)(1)(B)(ii) begins when a notice of appeal is filed.

The phrase "appellate review by the Board" appears twice in 35 U.S.C. § 154(b). The fact the identical phrase is used in another location in the same statute is relevant because "identical words used in different parts of the same statute are ... presumed to have the same meaning." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

Pursuant to 35 U.S.C. § 154(b)(1)(C)(iii), successful "appellate review by the Board" will result in an adjustment for delay resulting from the appeal. The Office has interpreted 35 U.S.C. § 154(b)(1)(C)(iii) to provide for an adjustment based on delay beginning when a notice of appeal has been filed. 37 C.F.R. § 1.703(e) states, with emphasis added,

> The period of adjustment under § 1.702(e) is the sum of 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 a final decision in favor of the applicant 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.

The Office's interpretation of 35 U.S.C. § 154(b)(1)(C)(iii) is supported by language in 35 U.S.C. § 154(b) prior to passage of the Patent Term Guarantee Act of 1999, Pub. L. No. 106-

113, § 4402, 113 Stat. 1501A-557. Prior to passage of the Patent Term Guarantee Act of 1999, 35 U.S.C. §§ 154(b)(2)-(3) stated, with emphasis added,

> Extension for *appellate review*. If the issue of a patent is delayed due to *appellate review* by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years....
>
> The period of extension ... shall include any period *beginning on the date on which an appeal is filed under section 134 or 141 of this title*, or on which an action is commenced under section 145 of this title, and ending on the date of a final decision in favor of the applicant.

As shown by the language quoted above, the period of appellate review in the former version of 35 U.S.C. § 154(b) began when a notice of appeal was filed. When Congress passed the Patent Term Guarantee Act of 1999, Congress failed to take any action to indicate Congress wished to change the starting date for the period of "appellate review" from the date a notice of appeal is filed until the date the application file is transferred to the Board.

In view of the prior discussion, the Office has reasonably concluded the period of "appellate review by the Board" under 35 U.S.C. § 154(b)(1)(C)(iii) begins when a notice of appeal is filed. Since identical words or phrases in the same statute are presumed to have the same meaning, the Office asserts the period of "appellate review" under 35 U.S.C. § 154(b)(1)(B)(ii) also begins when a notice of appeal is filed. The Office recognizes the presumption the same word or phrase in a statue has the same meaning is rebuttable. *See Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 575-76 (2007). However, the context of each instance of the phrase in the statute at issue fails to clearly indicate Congress intended for the same phrase to have two different meanings.

The Office has considered the arguments in the petition and determined the petition fails to establish the provisions of 37 C.F.R. § 1.702(b)(4) are inconsistent with the provisions of 35 U.S.C. § 154(b)(1)(B)(ii). Pursuant to 37 C.F.R. § 1.702(b)(4), the time period excluded from delay under 37 C.F.R. § 1.702(b) begins when a notice of appeal is filed. In other words, the appellate review period excluded from the period of B Delay begins when a notice of appeal is filed.

In this case, the period of appellate review began when a notice of appeal was filed on December 16, 2009, and ended on July 23, 2010, when the Office mailed a Notice of Allowance. The time consumed by the period of appellate review was 220 days. Therefore, the Office properly excluded 220 days from the period of B Delay as a result of time consumed by appellate review.

In light thererof, the patent term adjustment is 515 days, which is 231 days of A Delay + 592 days of B Delay – 220 days of excluded appellate period – 88 days of Applicant Delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an

opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). This fee is required and will not be refunded. No additional fees are required.

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 **five hundred fifteen (515)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,842,464 B2

DATED : **November 30, 2010** **DRAFT**

INVENTOR(S) : Gack 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 U.S.C. 154(b) by 516 days

Delete the phrase "by 516 days" and insert – by 515 days--

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OFFICE OF PETITIONS

In re Application of	:	
Moussy et al.	:	DECISION ON REQUEST
Patent Number: 7,718,676	:	FOR RECONSIDERATION OF
Issue Date: 05/18/2010	:	PATENT TERM ADJUSTMENT
Application No. 10/576267	:	and
Filing or 371(c) Date: 04/18/2006	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: 065691-0440	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on July 12, 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 seven hundred sixty-five (765) 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 sixty-five (765) 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 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 sixty-five (765) days**.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,718,676 B2

DATED : **May 18, 2010**

INVENTOR(S) : Moussy

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 764 days.

Delete the phrase "by 764 days" and insert – by 765 days--

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Paper No.

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WENDEROTH, LIND & PONACK, L.L.P.
1030 15th Street, N.W.,
Suite 400 East
Washington DC 20005-1503

In re Application of	:	
Aoki et al.	:	
Application No. 10/576,291	:	
In re Patent No. 7,823,416	:	DECISION ON PETITION
Filing Date: December 20, 2006	:	PURSUANT TO 37 C.F.R.
Issue Date: November 2, 2010	:	§ 3.81(B)
Attorney Docket Number:	:	
2006_0527A	:	
Title: GLASS COMPOSITION AND	:	
METHOD FOR PRODUCING GLASS	:	
ARTICLE	:	

This is a decision on the petition pursuant to 37 C.F.R. § 3.81(b), filed December 8, 2010, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

The petition is **GRANTED.**

With this petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. Petitioner has requested that the name of the Assignee should be changed from "Nippon Electric Gas Co., LTD." to "Nippon Electric Glass Co., LTD."

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

> (b) After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in 3.11 before issuance of the patent, and must include a request for a certificate of correction under 1.323 of this chapter (accompanied

> by the fee set forth in 1.20(a)) and the processing fee set forth in 1.17(i) of this chapter.

Petitioner has set forth that the assignment was submitted for recordation as set forth in 37 C.F.R. § 3.11 before issuance of the patent, and Office records confirm that an assignment was received in the Office on January 3, 2007, listing Nippon Electric Glass Co., LTD. of Shiga-Ken, Japan as the assignee.

Payment of the required $100 certificate of correction fee and the $130 processing fee is acknowledged.

The Certificates of Correction Branch will be notified of this decision so that the requested Certificate of Correction can be issued, correcting the Assignee information to "Nippon Electric Glass Co., LTD., Shiga-Ken (JP)."

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

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AUG 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,670,104 :
Issue Date: March 2, 2010 :
Application No. 10/576,399 :
Filed: September 12, 2006 :
Attorney Docket No. 4191-000006/US/NP

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 Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,407	06/19/2007	Karsten Hoffhaus	811844	5417

95402 7590 02/17/2011
LEYDIG, VOIT AND MAYER
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601

EXAMINER
BRINSON, PATRICK F

ART UNIT	PAPER NUMBER
3754	

NOTIFICATION DATE	DELIVERY MODE
02/17/2011	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):

chgpatent1@leydig.com

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CHICAGO IL 60601

In re Application of:
HOFFHAUS, KARSTEN et al
Serial No.: 10/576,407
Filed: June 19, 2007
Docket: 811844
Title: PIPE SEGMENT FOR A TRANSFER LINE FOR TRANSPORTING HOT PARTICULATE MATERIAL

DECISION ON PETITION

This is a decision on the petition filed on Feb. 8, 2011 by which petitioner requests reconsideration and withdrawal of the restriction requirement mailed Sep. 28, 2010, and that non-elected claims 25-29 be rejoined and examined on the merits. Claims 1-24 were elected for prosecution. This petition is being considered pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is DISMISSED.

A review of the record reveals that on September 28, 2010, a restriction requirement was made under 35 USC 121 and 372 between two disclosed and claimed inventions: I) claims 1-24 drawn to a pipe segment, II) claims 25-29 drawn to a process for transporting a hot particulate material in a carrier gas. This application was filed under 35 USC 371 and therefore the groups of inventions must be shown to be not so linked as to form a single general inventive concept under PCT Rule 13.1.

Petitioner argues that Groups I and II inventions relate to a single general inventive concept under PCT Rule 13.1. The claimed process Invention of Group II do require the particular structure recited in the apparatus Invention of Group I. Therefore, petitioner opines that the restriction mailed on September 28, 2010 was improper.

Relevant portions of MPEP 1850 Unity of Invention, states [emphasis added below]:

> An international application should relate to only one invention or, if there is more than one invention, the inclusion of those inventions in one international application is only permitted if all inventions are so linked as to form a single general inventive concept (PCT Rule 13.1). With respect to a group of inventions claimed in an international application, unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" is defined in PCT Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).
>
> Whether or not any particular technical feature makes a "contribution" over the prior art, and therefore constitutes a "special technical feature," should be considered with respect to novelty and inventive step. For example, a document discovered in the international search shows that there is a presumption of lack of novelty or inventive step in a main claim, so that there may be no technical relationship left over the prior art among the claimed inventions involving one or more of the same or corresponding special technical features, leaving two or more dependent claims without a single general inventive concept.
>
> Lack of unity of invention may be directly evident "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. For example, independent claims to A + X, A + Y, X + Y can be said to lack unity *a priori* as there is no subject matter common to all claims. In the case of independent claims to A + X and A + Y, unity of invention is present *a priori* as A is common to both claims. **However, if it can be established that A is known, there is lack of unity *a posteriori*, since A (be it a single feature or a group of features) is not a technical feature that defines a contribution over the prior art.**

In judging the propriety of the restriction requirement, a lack of unity of invention must be either directly evident "*a priori*", that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*", that is, after taking the prior art into consideration.

The examiner indicated in the restriction requirement that the inventions listed as Groups I-II did not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. The examiner stated that Group II invention does not require the particular structure recited in the invention of Group I, including providing an outer pipe section, an inner pipe section, support means supporting the inner pipe section so that the inner pipe section can expand axially relative to the outer pipe section, as required by the Group I invention.

MPEP 1850 clearly states that "Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims." [emphasis added]. The examiner should bear in mind that a claim may also contain a reference to another claim even if it is not a dependent claim as defined in PCT Rule 6.4. One example of this is a claim referring to a claim of a different category (for example, "Apparatus for carrying out the process of Claim 1 ...," or "Process for the manufacture of the product of Claim 1 ..."). Similarly, a claim to one part referring to another cooperating part, for example, "plug for cooperation with the socket of Claim 1 ...") is not a dependent claim.

After the examiner issued the restriction requirement and the applicant elected the group I invention (claims 1-24), the examiner issued a first action on the merits, non-final Office action dated December 8, 2010. In the non-final Office action, the examiner rejected the elected independent claim 1 as being anticipated by Stonitsch et al (USP 4,084,842). Claim 1 was the only independent claim in the elected group I.

Therefore, it became apparent "*a posteriori*", that is, after taking the prior art into consideration that lack of unity of invention exists. Because all of the features of claim 1 is known and does not avoid the prior art, there is no special technical feature that defines a contribution over the prior art that is common to all of the independent claims. In this situation, clearly there is lack of unity of invention.

For the reasons outlined above, the examiner's restriction requirement is considered proper. Petitioner's request to have the restriction requirement withdrawn will not be granted.

Conclusion

For the reasons outlined above, the restriction requirement issued on September 28, 2010 is in accordance with proper Office procedure. Accordingly, the restriction requirement stands. The petitioner's request to withdraw the restriction requirement is dismissed.

The application is being forwarded to Supervisory Patent Examiner of Art Unit 3754 for further processing. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry C. Yuen, Quality Assurance Specialist, at (571) 272-4856.

The petition is DISMISSED.

Karen M. Young, Director
Technology Center 3700

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Patent No. : 7997303 B2
Application No.: 10/576407
Inventor(s) : Hoffhaus, et al.
Issued : August 16, 2011
Attorney Docket No.: 811844

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: 571-273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Tasneem Siddiqui
For Mary Diggs (Supervisor)
Decisions & Certificates of Correction Branch
(703) **756-1593** or (703) 756-1814
Date: 12/08/2011

Address: Erik R. Swanson
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601-6731

ts/

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In re Patent No. 7,997,303 :
Issue Date: 08/16/2011 :
Application No. 10/576,407 : ON PETITION
Filed: 06/19/2007 :
Attorney Docket No. 811844 :

This is a decision on the petition under 37 CFR 3.81(b) filed December 30, 2011.

Patentees request correction of the front page of the Letters Patent to include the correct assignee data via Certificate of Correction. Patentees submitted a completed Certificate of Correction form and paid the requisite fees. Furthermore, it is noted that the assignment was recorded with the USPTO prior to the issuance of the patent.

In view of the above, the request under 37 CFR 3.81(b) to correct the assignee data is GRANTED.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction as to the assignment information.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

HARRITY & HARRITY, LLP
11350 RANDOM HILLS ROAD
SUITE 600
FAIRFAX VA 22030

In re Patent No. 7,865,197
Issued: January 4, 2011
Application No. 10/576,474
Filing or 371(c) Date: April 20, 2006
Dkt. No.: PS02 0184WO1

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT

This is a decision on the petition filed March 4, 2011, 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 1059 days.

The petition is **DISMISSED**.

Patentees dispute the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. 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). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See, 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the 143 day period consumed by appellate review began on January 25, 2010, the date of filing of the notice of appeal, and ended on June 16, 2010, the mailing date of the non-final Office action. Thus, the adjustment accorded for B delay will not be increased.

It is noted that the Office issued a Notice of proposed rulemaking entitled Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements, 76 FR 18990 (April 6, 2011). To the extent that the final rule on Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The 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/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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

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DEC 14 2010
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In re Application of	:	
Herbert Wolter	:	
Application No. 10/576,514	:	DECISION GRANTING PETITION
Filed: April 20, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 060953-0138	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 14, 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 September 22, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1621 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/AMW/
April M. Wise
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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901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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In re Application of	:	
Kalled et al.	:	DECISION ON APPLICATION
Application No. 10/576,527	:	FOR PATENT TERM ADJUSTMENT
Filed: 05/01/2007	:	
Docket No. 08201.0042-00000	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT," filed October 20, 2010, which is being treated as a petition under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected to one hundred fifty-one (151) days.

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

On July 21, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 104 days. On October 20, 2010, applicants timely submitted the instant application for patent term adjustment[1]. Applicants state that the application is not subject to a terminal disclaimer.

On petition, applicants assert that they are entitled to 47 days of Office delay pursuant to 37 CFR 1.702(a)(2). Specifically, applicants explain:

> The PTO mailed an Office Action, which was an additional Restriction Requirement, on June 1, 2009.

[1] The Office records show that the issue fee was received on October 20, 2010.

> Applicants filed a response on September 1, 2009.
>
> The PTO mailed a Final Office Action on November 23, 2009.
>
> On February 17, 2010, the PTO mailed a Non-Final Office Action, which stated that the Final Office Action of November 23, 2009, had been withdrawn, resulting in a PTO delay of 47 days beyond the 4 months provided by 35 U.S.C. § 154(b).

Petition, 10/20/10, p. 2.

The Office has considered applicants' argument, but does not find it persuasive. Pursuant to 37 CFR 1.702(a),

> 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:
>
> (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;

On November 23, 2009, the examiner responded to applicants' reply to the Restriction Requirement filed on September 1, 2009. The final Office action of November 23, 2009, met the minimum requirements of an action under 35 U.S.C. 132 and was mailed within four months of the September 1, 2009 filing date of the reply. Accordingly, no period of adjustment for Office delay was entered. A review of the record confirms that no period of adjustment for Office delay is warranted.

The subsequent mailing of the non-final Office action by the examiner withdrawing the Office action of November 23, 2009, does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on November 23, 2009. Specifically, the Office notes that an examiner does not have the authority to vacate or rescind an Office action. Unless vacated by the Technology Center Director, the action originally mailed by the examiner on November 23, 2009, will be used for purposes of calculating patent term adjustment.

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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8000 EXCELSIOR DRIVE, SUITE 301
MADISON, WI 53717

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OFFICE OF PETITIONS

In re Application of
Friedrich Stolte et al
Application No. 10/576,645
Filed: March 9, 2007
Attorney Docket No. 10034.542

DECISION ON PETITION

This is a decision on the petition, filed July 20, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of January 5, 2010, which set a three (3) month period for reply. Three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, a reply was due on or before July 5, 2010.

Office records show a timely reply was received July 6, 2010 (July 5, 2010 being a holiday), which includes the amendment and the three (3) month extension of time. Petitioner has submitted a copy of the previously mailed correspondence with this petition.

The petition satisfies the requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of January 5, 2010 is hereby withdrawn and the application restored to pending status.

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

This application is being referred to Technology Center AU 3644 for appropriate action in the normal course of business on the reply received July 5, 2010.

Irvin Dingle
Petitions Examiner
Office of Petitions

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CONTINENTAL TEVES, INC.
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AUBURN HILLLS MI 48326-1581

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In re Application of	:	
Michael Beuschel et al.	:	
Application No. 10/576,662	:	DECISION ON PETITION
Filed: December 22, 2006	:	
Attorney Docket No. **TM024**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 29, 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, September 22, 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 December 23, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) an adequate statement of unintentional delay. Accordingly, the reply to the non-final Office action of September 22, 2008 is accepted as having been unintentionally delayed.

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.

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

This application is being referred to Technology Center AU 3662 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,693	01/26/2007	Tomoaki Kubo	0230-0238PUS1	1952

2292 7590 05/17/2011
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
FOX, DAVID T

ART UNIT	PAPER NUMBER
1638	

NOTIFICATION DATE	DELIVERY MODE
05/17/2011	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):

mailroom@bskb.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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

May 13, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Kubo, Tomoaki et al	:	**DECISION ON PETITION**
Application No. 10/576,693	:	
Filed: 01/26/2007	:	
Attorney Docket No. 0230-0238PUSI	:	

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) January 26, 2007.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings, and
3. The specification containing 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 did not meet the following requirement(s). 1 ☐ 2 ☑ 3 ☐
*This application does not have all 3 sets of the latest dated drawings and the drawings submitted as EFS on 07/20/2009 (Figures 3 and 7) are not in color.

A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Diane Terry/
Quality Control Specialist
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

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

June 30, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Kubo, Tomoaki et, al	:	**DECISION ON PETITION**
Application No. 10/576,693	:	
Filed: 01/26/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 0230-0238PUSI	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 29, 2011.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Diane Terry/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

NOV 03 2010

OFFICE OF PETITIONS

FOX ROTHSCHILD LLP
997 LENOX DRIVE, BLDG. #3
LAWRENCEVILLE, NJ 08648

In re Application of	:	
Florence HENRY, et al	:	
Application No. 10/576,816	:	ON PETITION
Filed: April 24, 2006	:	
Attorney Docket No. C 2874 PCT/US	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed October 5, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of September 25, 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 December 26, 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 $1620; and (3) a proper statement of unintentional delay.

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

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

This application is being referred to Technology Center AU 1655 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.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

Cc: ROBERT N. HENRIE, II
FOX ROTHSCHILD LLP,
2000 MARKET STREET
PHILADELPHIA, PA 19103

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120419

DATE : January 30, 2012

TO SPE OF : ART UNIT 3645

SUBJECT : Request for Certificate of Correction on Patent No.: 7,889,597

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:

This response is for the certificate of correction received on January 30, 2012.

/ISAM ALSOMIRI/
Supervisory Patent Examiner.Art Unit 4129

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
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 RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 06-246	
Application Number: 10/576,987	Filing Date (or 371(b) or (f) Date): October 12, 2006
Patent Number: 7,674,089	Issue Date: March 9, 2010
First Named Inventor: Stefan Werner	
Title: DEVICE AND METHOD FOR GUIDING AT LEAST TWO FLOW MEDIA	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /Gregory P. LaPointe #28395/	Date August 30, 2010
Name (Print/Typed) Gregory P. LaPointe	Registration Number 28,395

***Note**: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☐ *Total of _____ forms are submitted.

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 10 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.

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.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

> Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

1. **For patents issued before March 2, 2010:** A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.

2. **For patents issued on or after March 2, 2010 (do not use this form):** Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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BACHMAN & LAPOINTE, P.C.
900 CHAPEL STREET
SUITE 1201
NEW HAVEN, CT 06510

Mail Date: 09/08/2010

Applicant	: Stefan Werner	: DECISION ON REQUEST FOR
Patent Number	: 7674089	: RECALCULATION of PATENT
Issue Date	: 03/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/576,987	: OF WYETH
Filed	: 10/12/2006	:
		:

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/23/10 **Paper No.:** ——

TO SPE OF : ART UNIT 1797

SUBJECT : Request for Certificate of Correction for Appl. No.: 10577006 Patent No.: 7776801B2

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.

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

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

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

Comments: Changes are approved

/Glenn Caldarola/ SPE AU1771

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

GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

MAILED
JUN 06 2011
OFFICE OF PETITIONS

In re Application of	:	
Hazuki OKABAYASHI et al.	:	
Application No. 10/577,133	:	DECISION ON PETITION
Filed: April 25, 2006	:	
Attorney Docket No. P29835	:	

This is a decision on the petition under 37 CFR 1.182, filed, March 28, 2011, to change the name of inventor "Hazuki Okabayashi" to -- Hazuki Kawai --.

The petition is **DISMISSED**.

The issue fee in this application was paid on March 30, 2011. As this petition was filed prior to the payment of the Issue fee, the petition has been timely filed. However, the petition fails to include a statement signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a copy of the court order (See MPEP 605.04(c)). Accordingly, the petition cannot be granted at this time to change the inventor's name.

Effective May 29, 2000, the Office changed the practice by clarifying that an amendment under 37 CFR 1.312 (after allowance) must be filed prior to or with payment of the issue fee, and eliminated 37 CFR 1.312(b). Since a change to the inventor's name is an amendment to the application, and amendments are not permitted after payment of the issue fee, any renewed petition under 37 CFR 1.182 to change the inventor's name cannot be granted, unless accompanied by a request for a certificate of correction and fee of $100 therefor.

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 Tredelle Jackson at (571) 272-2783.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09-21-11

TO SPE OF : ART UNIT 2431

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/577158 Patent No.: 8001615

CofC mailroom date: 09-08-11

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

Note: _____

_____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

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

Comments: _____

SPE /Nathan J. Flynn/ SPE 2431 **Art Unit** 2431

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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WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

MAILED

DEC 05 2011

OFFICE OF PETITIONS

In re Application of :
Balazs et al. :
Application No. 10/577,177 :
Filed: February 5, 2007 :
Attorney Docket No. :
C1233.70001US01 :
Title: METHODS FOR PURIFYING :
HEMATOPOIETIC STEM CELLS :
:

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed November 17, 2011. Applicants request that the determination of patent term adjustment be corrected from one hundred thirty-one (131) days to six hundred forty-six (646) days.

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

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under §

1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

To the extent that applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the

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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.

notice of allowance, the application for patent term adjustment is **DISMISSED** to the extent indicated herein.

On September 8, 2011, 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 131 days. The instant application for patent term adjustment was timely filed on November 17, 2011.

Applicants' calculations include a 228 day adjustment for the delay in mailing the Notice of Allowance of September 8, 2011 in response to the September 24, 2010 request for continued examination (RCE) and amendment.

The Office has concluded that an adjustment of 227 days was properly entered based on 37 CFR 1.702(a)(2). 37 CFR 1.702(a)(2) provides that:

> 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:
>
> > 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;

In this instance, the Office took until September 8, 2011 to mail the Notice of Allowance in response to the RCE and amendment filed September 24, 2010. Pursuant to 37 CFR §1.703(a)(2), a period of adjustment of two hundred twenty-seven (227) days, counting the number of days in the period beginning on the day after the date that is four months after the date a reply was filed, January 25, 2011, and ending on the date of mailing of the Notice of Allowance September 8, 2011, should have been entered.

Applicants' delay prior to the mailing of the Notice of Allowance is 172 days. Office delay prior to the mailing of the Notice of Allowance is 303 days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 131 days.

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

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

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

Charlema Grant
Attorney Advisor
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

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED
MAY 16 2011
OFFICE OF PETITIONS

In re Application of	:	
Hitoshi Naoe, et al.	:	
Application No. 10/577,337	:	DECISION GRANTING PETITION
Filed: April 28, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1248-0867PUS1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, May 16, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 15, 2011 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 Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2462 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
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 : November 15, 2010

TO SPE OF : ART UNIT 3616

SUBJECT : Request for Certificate of Correction for Appl. No.: 10577372 Patent No.: 7712768

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Certificates of Correction Branch

703-756-1573

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: APPROVED

/Paul N. Dickson/ 3616
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,408	04/25/2006	Francesco Cilurzo	207,565	1408

7590 05/02/2011

Jay S. Cinamon
Abelman, Frayne & Schwab
666 Third Avenue
10th Floor
New York, NY 10017

EXAMINER
SUTTON, DARRYL C

ART UNIT	PAPER NUMBER
1612	

MAIL DATE	DELIVERY MODE
05/02/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 0 2 2011

Jay S. Cinamon
Abelman, Frayne & Schwab
666 Third Avenue
10th Floor
New York NY 10017

In re Application of:
Cilurzo, et al.
Serial No.: 10/577,408
Filed: April 25, 2006
Attorney Docket No.: **207,565**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.181, filed April 15, 2011, requesting relief from the finality of the Office action mailed October 22, 2010 because it is premature.

Applicants' arguments have been accorded careful consideration but they are not persuasive for the following reasons. The petition was untimely and therefore the merits of such won't be considered. Applicants should note that 37 CFR 1.181(f) indicates that any petition not filed within two months of the mailing date of the action from which relief is requested may be dismissed as untimely. If the applicant wants consideration after the two months they should file a petition, and corresponding petition fee for such, under 37 CFR 1.183 and ask for a suspension of the Rule 181 and ask that consideration be made later than the 2 months.

Accordingly, the petition filed under 37 CFR 1. 181 is **DISMISSED** as untimely.

Furthermore, since an RCE was filed, this petition is **DISMISSED** as moot.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Jacqueline Stone
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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WINSTEAD PC
P.O. BOX 50784
DALLAS TX 752201

MAILED
SEP 19 2011
OFFICE OF PETITIONS

In re Patent No. 7,900,401	:	
Issue Date: March 8, 2011	:	
Application No. 10/577,583	:	NOTICE
Filed: May 19, 2006	:	
Attorney Docket No. 46845-P049WOUS	:	

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

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

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

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

Inquiries related to this communication should be directed to Diane C. Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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WINSTEAD PC
P.O. BOX 50784
DALLAS TX 75201

MAILED
SEP 20 2011
OFFICE OF PETITIONS

In re Patent No. 7,900,401	:	
Issue Date : March 8, 2011	:	
Application No. 10/577,583	:	ON PETITION
Filed: May 19, 2006	:	
Attorney Docket No. 46845-P049WOUS	:	

This is a decision on the petition filed August 16, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee information on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **DISMISSED**.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

The request under 37 CFR 3.81(b) was not accompanied by a statement that the assignment was submitted for recordation before issuance of the patent, as required by 3.81(b). *See also* MPEP 1481.01.

As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

Inquiries concerning this decision should be directed to Diane C. Goodwyn at (571) 272-6735.

---

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

Any questions concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

Thurman K. Page
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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Johnson & Johnson
International Patent Law Division
P.O. Box 1222
New Brunswick, NJ 08901

Mail Date: 08/31/2010

Applicant	: Oliver William Davies	: DECISION ON REQUEST FOR
Patent Number	: 7653492	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/577,586	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/26/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **62** 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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MAILED
AUG 12 2011
OFFICE OF PETITIONS

3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL MN 55133-3427

In re Application of	:	
Carsten Andersen	:	
Application No. 10/577,598	:	DECISION ON PETITION
Filed: December 18, 2006	:	
Attorney Docket No. HBE0008US	:	

This is a decision on the petition, filed July 8, 2011, 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 September 1, 2010, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on April 26, 2011.

Petitioner asserts that the Office action dated September 1, 2010 was not received.

A review of the written record indicates an irregularity in the mailing of the Office action of September 1, 2010. In this regard, the Office received a revocation power of attorney and change of address on August 16, 2010, prior to the mailing of the Office action of September 1, 2010. Office records were not timely updated to reflect this new change of address. Accordingly, as the Office action was mailed to an incorrect address, the Notice of Abandonment mailed April 26, 2011 is hereby vacated and the holding of abandonment withdrawn.

The Power of attorney filed August 16, 2010 has been accepted and the correspondence address has been changed to the one above.

This application is being referred to the Technology Center technical support staff of Art Unit 1786 for re-mailing the Office action of September 1, 2010 and resetting the period for reply.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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CHRISTOPHER PL HARRIS
TARILLI, SUNDHEIM, COVELL & TUMMINO
1300 EAST NINTH STREET
SUITE 1700
CLEVELAND, OH 44114

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Kelvin Hamilton, et al.	:	
Application No. 10/577,676	:	DECISION GRANTING PETITION
Filed: March 14, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. MC1-8146	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 3, 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 June 28, 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 concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

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 information disclosure statement

/AMW/
April M. Wise
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.*

UNITED STATES PATENT AND TRADEMARK OFFICE

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NOV 24 2010
OFFICE OF PETITIONS

LICATA & TYRRELL P.C.
66 E. MAIN STREET
MARLTON NJ 08053

In re Application of	:	
Frank K. Ko et al.	:	
Application No. 10/577,709	:	DECISION ON PETITION
Filed: August 18, 2006	:	
Attorney Docket No. DRE0166US.NP	:	

This is a decision on the petition for expungement of information, filed August 4, 2010, which is being treated as a petition under 37 CFR 1.182 to expunge an assignment previously recorded against Application No. 10/557,709

The petition is **dismissed**.

The petition is deficient because it is filed in the wrong application. Office records show there is no assignment in Application No. 10/577,709, the application the instant petition was filed in. Any petition to expunge an assignment recorded under Application No. 10/557,709 needs to be filed in that application.

Petitioner is directed to MPEP 323.01(d) for petitions regarding expungement of assignment records.

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 communication should be directed to Carl Friedman at (571)272-6842.

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

Patent No. : **7423037**
Ser. No. : **10/577841**
Inventor(s) : **CAMPBELL, GORDAN IAIN**
Issued : **09/09/2008**
Title : **MORPHOLINE DERIVATIVES AS NOREPINEPHRINE REUPTAKE INHIBITORS**
Docket No. : **X-15830**

Re: Request for Certificate of Correction

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

In regards to the alleged error(s) in the Specification, the Specification is printed in accordance with the Specification filed by the applicant/attorney.

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

A Certificate of Correction request, accompanied by the $100 fee, can be filed for reconsideration.

A Certificate of Correction will be issued for the remaining errors.

Omega Lewis
For Mary Diggs
Decisions & Certificates
Of Correction Branch
(703)756-1575 or (703) 756-1814

Eli Lilly and Company
Patent Division
P.O. Box 6288
Indianapolis, Indiana 46206-6288

OL

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COMMISSIONER FOR PATENTS
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Paper No.

MERCK
P.O. BOX 2000
RAHWAY NJ 07065-0907

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of :
Steven Ludmerer : DECISION ON PETITION
Application No. 10/577,893 :
Deposited: May 1, 2006 :
Attorney Docket No. 21564Y :

This is in response to the Petition to Withdraw the Holding of Abandonment filed September 21, 2010.

The above-identified application became abandoned for failure to timely or properly file a reply to the NOTIFICATION TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATION CONTAINING NUCLEOTIDE AND/OR AMINO ACID SEQUENCE DISCLOSURES mailed January 5, 2007. This Notice set a two-month time limit for reply, with extensions of time obtainable under § 1.136(a). No reply considered filed and no extension of time considered obtained, the application became abandoned effective March 6, 2007. A courtesy Notice of Abandonment was mailed on August 18, 2010.

In response, applicant filed the instant petition. Applicant maintains that a response was timely filed on January 24, 2007. Applicant states that the response was filed via Express Mail and is shown on the Patent Application Information Retrieval System as having arrived and been scanned into the system on January 26, 2007.

Preliminarily, it is noted that the instant petition was filed more than 3 years after the abandonment of the application. Applicant is encouraged to utilize PAIR to monitor the status of pending applications. A petition under 1.181 to withdraw the holding of abandonment may be dismissed without consideration on the merits for failure to timely file the petition within 2 months of the mailing of the notice of abandonment (or within 12

months of the filing of a paper for which applicant would expect further action). Under the circumstances of this case, discretion will be exercised in favor of applicant and the petition considered on the merits. However, the delay in filing the petition may cause any patent term adjustment to be reduced under the provisions of 37 CFR 1.704(c)(4). See *Petitions to Withdraw Holding of Abandonment*, June 22, 2004; MPEP 711.03(c) IIIC.

Consideration of petitioner's evidence is unnecessary. Their timely response is present in the application with a date of receipt of January 26, 2007. There is no indication in the record of deficiency in this response.

Accordingly, the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

The Office of Patent Application Processing has been advised of this decision. The application is, thereby, returned to the Office of Patent Application Processing for completion of pre-examination processing, including processing the response timely filed January 26, 2007.

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

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No.

MERCK
P.O. BOX 2000
RAHWAY NJ 07065-0907

MAILED
JUN 21 2011
OFFICE OF PETITIONS

In re Application of :
Steven Ludmerer : ON PETITION
Application No. 10/577,893 :
Deposited: May 1, 2006 :
Attorney Docket No. 21564Y :

This is in response to the Petition to Withdraw the Holding of Abandonment filed May 20, 2011.

By decision mailed January 3, 2011, a prior Petition to Withdraw the Holding of Abandonment filed September 21, 2010 was granted.

However, on March 30, 2011, the Office mailed a Notice of Abandonment. The Notice of Abandonment was mailed in error. The decision withdrawing the holding of abandonment is affirmed. The error has been corrected and the holding of abandonment has been **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

The Office of Patent Application Processing has been advised of this decision. The application is, thereby, returned to the Office of Patent Application Processing for completion of pre-examination processing.

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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,918	08/21/2006	Holger Hulser	66376-385-7	6871

25269 7590 11/03/2010
DYKEMA GOSSETT PLLC
FRANKLIN SQUARE, THIRD FLOOR WEST
1300 I STREET, NW
WASHINGTON, DC 20005

EXAMINER
CAMBY, RICHARD M

ART UNIT	PAPER NUMBER
3661	

MAIL DATE	DELIVERY MODE
11/03/2010	PAPER

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

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

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10577918	8/21/06	HULSER, HOLGER	66376-385-7

EXAMINER
RICHARD M. CAMBY

ART UNIT	PAPER
3661	20100604

DATE MAILED:

DYKEMA GOSSETT PLLC
FRANKLIN SQUARE, THIRD FLOOR WEST
1300 I STREET, NW
WASHINGTON, DC 20005

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

Commissioner for Patents

Please see attached grant of the petition to add inventors under 37 C.R.R 1.324.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7,257,477 Issue Date: August 14, 2007 Appl No.: 10/577,918 Filed: August 21, 2006 For: METHOD FOR CONTROLLING A PRIME MOVER FOR A VEHICLE	**DECISION GRANTING PETITION** *37 CFR 1.324*

This is a decision on the petition filed November 16, 2009 to correct inventorship under 37 CFR 1.324. It has been found that the above-identified patent, through error and without any deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Holger Hülser, Robert Fisher, Alois Danninger and Michael Stolz

The petition is granted.

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

/Thomas G. Black/

Thomas G. Black
Supervisory Patent Examiner
Art Unit 3661
Technology Center 3600

DYKEMA GOSSETT PLLC
FRANKLIN SQUARE, THIRD FLOOR WEST
1300 I STREET, NW
WASHINGTON, DC 20005

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/6/11

TO SPE OF : ART UNIT: 1634

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/577,948 Patent No. 7,842,455

CofC mailroom date 11/10/11

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

Angela Green
Certificates of Correction Branch
(571) 272-9005

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.
X	**Denied**	State the reasons for denial below.

Comments: Applicant states that the abstract of the patent refers to a "p21Ec31 A/T polymorphism". However, the abstract does not refer to such term. The current abstract refers to "genetic screens based on genotyping of the p21E2c31 polymorphism and/or the p21Ee+20 C/T polymorphism in the p21 cip 1 gene.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Dave Nguyen/

1634

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
APR 19 2011
OFFICE OF PETITIONS

HOLTZ, HOLTZ, GOODMAN
& CHICK PC
220 Fifth Avenue
16TH Floor
NEW YORK NY 10001-7708

In re Patent No. 7,906,639	:	DECISION ON REQUEST FOR
Issued: March 15, 2011	:	RECONSIDERATION OF PATENT
Application No. 10/577,982	:	TERM ADJUSTMENT AND
Filed: May 2, 2006	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. **06189/HG**	:	CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT FOR RECONSIDERATION OF PATNET TERM ADJUSTMENT INDICATED IN AN ISSUED PATENT (37 C.F.R. § 1.705(d))," filed March 23, 2011. Patentee requests that the patent term adjustment for the above-identified patent be set at 95 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **95 days**.

On March 15, 2011, Application No. 10/577,982 matured into Patent No. 7,906,639. The instant request for reconsideration filed March 23, 2011, was timely filed within two (2) months of the date the patent issued. See 37 CFR 1.705(d). Patentee disputes the reduction of 120 days associated with the filing of a "miscellaneous incoming letter" received in the Office on August 23, 2010. Patentee asserts that the paper filed on August 23, 2010, was a Letter of Candor and Good Faith, and therefore, no reduction is warranted under 37 CFR 1.704(c)(10).

A review of the PALM calculations for this application reveals that the patent term adjustment was reduced by 120 days for the submission of the "miscellaneous incoming letter." See 37 CFR

1.704(c)(10). However, a review of the application record confirms that no paper aside from the Letter of Candor and Good Faith was filed after the mailing of the notice of allowance. A Letter of Candor and Good faith is not a paper for which its filing is considered a "failure to engage in reasonable efforts" within the meaning of 37 CFR 1.704(c)(10). Thus, it is concluded that the reduction of 120 days is not warranted.

In view thereof, the patent term adjustment indicated in the patent should be **95 days**.

The Office is in receipt of the $200. 00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

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 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 ninety-five (95) days.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,906,639 B2

DATED : Mar. 15, 2011

INVENTOR(S) : Koizumi

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 95 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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WESTERMAN HATTORI DANIELS & ADRIAN LLP
1250 CONNECTICUT AVENUE NW
SUITE 700
WASHINGTON DC 20036

MAILED
MAR 11 2011
OFFICE OF PETITIONS

In re	:
Takashi Fujita	: DECISION REGARDING
Application No. 10/577,999	: PATENT TERM ADJUSTMENT
Filed: May 3, 2006	:
Attorney Docket No. 062489	:

This letter is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)", filed December 30, 2010. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred seventy (370) days to four hundred thirty-eight (438) days.

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

On October 1, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is three hundred seventy (370) days. On December 30, 2010, Applicant timely[1] submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is four hundred thirty-eight (438) days.

Applicant states that the patent is not subject to a terminal disclaimer.

---

[1] Applicant filed the application for patent term adjustment together with the filing of the issue fee.

The Office initially determined a patent term adjustment of three hundred seventy (370) days based on an adjustment for PTO delay of four hundred sixty-one (461) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and seven (7) days pursuant to 35 U.S.C. 154(b)(1)(a)(iI) and 37 C.F.R. 1.703(a)(2), reduced by Applicants' delays of fifteen (15) and fifteen (15) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. 1.704(b), and sixty-eight (68)days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of sixty-eight (68) days is at issue.

37 CFR 1.704(d) states:

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section **if it is accompanied by a statement** that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable. (Emphasis added).

Here, the IDS filed on November 4, 2009 was not accompanied by the statement set forth above. Accordingly, the assessment of 68 days of applicant delay with respect to this IDS was proper.

Receipt of the $200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for processing into a patent.

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

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110124

DATE : January 24, 2011

TO SPE OF : ART UNIT 2611

SUBJECT : Request for Certificate of Correction on Patent No.: 7,649,962

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:

/David C. Payne/
Supervisory Patent Examiner, Art Unit 2611

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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DUANE MORRIS LLP - Philadelphia
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA PA 19103-4196

MAILED

FEB 13 2012

OFFICE OF PETITIONS

In re Application of

Hein

Application No. 10/578,086

Filed: March 7, 2008

Attorney Docket No. **D4695-00153**

DECISION ON PETITION

This is a decision on the "Request for Withdraw of Notice of Abandonment", filed January 12, 2012, which is being treated as a petition under 37 CFR 1.181(a) to withdraw the holding of abandonment.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

A review of the application file history reveals that on November 10, 2008, a "Notification of Missing Requirements under 35 U.S.C 371 in the United States Designated/Elected Office (DO/EO/US)" was mailed allowing an extendable period for reply of two months from its mailing date. A response was filed on March 7, 2008. On July 2, 2008, a "Notice of Acceptance of Application under 35 USC 371 and 37 CFR 1.495" and filing receipt were mailed. The notice indicated that the all of the requirements under 35 U.S.C. 371 were satisfied on March 7, 2008. Notwithstanding, Notices of Abandonment were mailed on November 16, 2007, November 20, 2008, July 17, 2009, indicating that the application was abandoned for failure to file a response to an undated "Notice to File Missing Parts". On July 21, 2009, applicant filed a petition under 37 CFR 1.181 to have the holding of abandonment withdrawn. The petition was granted by a decision mailed September 30, 2009.

A restriction/election requirement was mailed August 22, 2011, allowing a shortened period for reply of one month from its mailing date. Extensions of the time set for reply were available under 37 CFR 1.136(a). On November 18, 2011, applicant filed a response to the restriction/election requirement, with along with a request for an extension of time within the second month. On January 9, 2012, a Notice of Abandonment was mailed indicating that the application was abandoned for failure to file a response to an undated "Notice to File Missing Parts". It is noted that another Notice of Abandonment was mailed February 2, 2012, indicating that the application was abandoned for failure to file a response to an undated "Notice to File Missing Parts". The instant petition was filed January 12, 2012, requesting withdrawal of the holding of abandonment.

The review of the application file history did not reveal any notice of Office action mailed to applicant to which applicant did not file a timely response. Further, as all of the requirements under 35 USC 371 were meet on March 7, 2008, it is unlikely that a Notice to File Missing Parts would be mailed and such was

not found in the Image File Wrapper, excluding the notice mailed November 18, 2008, to which applicant timely and completely responded. It is apparent the imposition of the holding of abandonment was improper and there is no outstanding requirement to which applicant did not respond. The holding of abandonment is withdrawn accordingly.

Applicant may wish to contact the Office of Data Management, Application Assistance Unit at the telephone number provided on the notices to determine why this Office continues to send these erroneous Notices of Abandonment.

The application file is being forwarded Technology Center 1700, GAU 1744, for further processing, including processing of the response to the restriction/election requirement which was filed November 18, 2011.

Further inquires regarding this decision may 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
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SEP 30 2010

OFFICE OF PETITIONS

RANKIN, HILL & CLARK LLP
23755 Lorain Road - Suite 200
North Olmsted OH 44070-2224

In re Application of	:	
Emil Enz, et al.	:	
Application No. 10/578,124	:	ON PETITION
Filed: December 5, 2006	:	
Attorney Docket No. GIL-17254	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 15, 2010, 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 December 13, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 14, 2009. The Notice of Abandonment was mailed July 23, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/882,286.

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 $1,110 extension of time fee submitted with the petition on September 15, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 03-10-12

TO SPE OF : ART UNIT 1741

SUBJECT : *Request for Certificate of Correction for Appl. No.:* 10/578207 *Patent No.:* 7931779

CofC mailroom date: 03-02-12

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

Note: _____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

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

Comments: Request for Certificate of Correction merely incorporates changes made by preliminary amendment. Examination was conducted on the basis of the preliminary amendment.

SPE Matthew J. Daniels

Art Unit SPE Art Unit 1741

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Patent No. : 7861939 B2
Application No.: 10/578253
Inventor(s) : Romedahl et al.
Issued : 01/04/2011
Title : METHODS AND ARRANGEMENT IN AN INFORMATION MANAGEMENT SYSTEM
Attorney Docket No.: 09059.0053-00000

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: 571-273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

A certificate of correction will issued for the remaining errors noted in your request.

Tasneem Siddiqui
For Mary Diggs (Supervisor)
Decisions & Certificates of Correction Branch
(703) **756-1593** or (703) 756-1814
Date: 02/24/2011

Address: Philip J. Hoffmann
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413

ts/md

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

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JAN 31 2011

OFFICE OF PETITIONS

In re Patent No. 7,611,199
Issued: November 3, 2009
Application No. 10/578,278
Filed: May 5, 2006
Attorney Docket No. 026032-5038

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 filed on December 28, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 235 days to 397 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).[1]

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 adjusted by three hundred ninety-seven (397) days and 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 **three hundred ninety-seven (397)** days.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

---

[1]Reconsidered in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,611,199 B2

DATED : November 3, 2009

INVENTOR(S) : Eric B. Michalak

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 (235) days

Delete the phrase "by 235 days" and insert – by 397 days--

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (NY)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of
Tetsuji Yamaoka et al.
Application No. 10/578,283
Filed: May 4, 2006
Attorney Docket No. 18900-0004US1 / 200640/US

ON PETITION

This is a decision on the petition filed March 31, 2009, to withdraw the holding of abandonment, which is being treated under 37 CFR 1.181.

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

The application was held abandoned on July 25, 2008 for failure to file a timely response to the non-Final Office Action mailed June 23, 2008. A one (1) month period for reply was set. Accordingly, a Notice of Abandonment was mailed February 5, 2009.

Petitioner asserts that in response to the Restriction Requirement, a timely Election was filed July 22, 2008. Submitted as proof is a copy of the response said to have been filed as well as an electronic acknowledgment receipt dated July 22, 2008.

A search of the application file and the USPTO records reveals that in fact, a response was timely filed on July 22, 2008 and is of record. Accordingly, the Notice of Abandonment mailed February 5, 2009 was mailed in error and is hereby withdrawn. No petition fee is due and none has been charged.

This matter is being referred to Technology Center 1633 for treatment of the response filed July 22, 2009.

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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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE WA 98104

MAILED
NOV 30 2011
OFFICE OF PETITIONS

In re Patent No. 7,865,073 :
Issue Date: January 4, 2011 :
Application No. 10/578,307 :
Filed: July 23, 2007 :
Attorney Docket No. 240102.405USPC

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 Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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DEC 05 2011

PCT LEGAL ADMINISTRATION

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

In re Application of CHERKASOV et al. Serial No.: 10/578,313 PCT App. No.: PCT/EP04/12556 Int'l Filing Date: 05 November 2004 Priority Date: 05 November 2003 Attorney Docket No.: 076030-0011 For: MACROMOLECULAR NUCLEOTIDE COMPOUNDS AND METHODS FOR USING THE SAME	DECISION ON PETITION UNDER 37 CFR 1.181

This is a decision on applicant's "Petition under 37 CFR 1.181(a) to Correct 35 U.S.C. 371(c) Date", filed in the US Patent and Trademark Office on 15 September 2011. No petition fee is required.

BACKGROUND

On 04 May 2006 applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 18 January 2007, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an English translation of the international application was required . The notification set a TWO (2) MONTH period for response.

On 18 July 2007, applicant filed a response along with an English translation of the part of the international application.

On 09 October 2007, a Notice of Acceptance was erroneously mailed indicating that applicant had met the requirements of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) on 18 July 2007.

On 25 January 2008, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating, that the application went abandoned for failure to respond to the Notification of Missing Requirements mailed 18 January 2007.

On 21 February 2008, applicant filed a petition requesting that the Office withdraw the holding of abandonment as the applicant had timely replied to the Notification of Missing Requirements. On 30 April 2008, a decision vacating the Notification of Abandonment and advising applicant that the response to the Notification of Missing Requirements was incomplete. Specifically, the decision indicated that an English translation of Claims 1-68 was not found among the papers filed on 18 July 2007 in response to the Notification of Missing Requirements.

DISCUSSION

The English translation of the claims allegedly submitted on 18 July 2007 is not found in the application file.

As stated in section 503 of the Manual of Patent Examining Procedure (MPEP):

> 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 a 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 invention, etc.

With the instant petition, Petitioner provided a copy of the English translation of the claims filed on 18 July 2007 and a copy of the USPTO date-stamped postcard receipt indicating that the English translation of the claims were filed. The postcard identifies the first applicant/inventor's name, title of the invention and docket number. Among the items listed on the postcard receipt are "14 pages of Claims (English Translation". The postcard is date-stamped by the USPTO "OIPE JUL 18 2007".

A review of the USPTO date-stamped, itemized postcard receipt indicates that the "14 pages of claims (English translation)" were deposited with the USPTO on 18 July 2007. Applicant has now presented a copy of the claims originally filed on 18 July 2007 and provided a copy of the date-stamped postcard receipt. Thus, the evidence is sufficient to establish that the translated claims were received in the USPTO on 18 July 2007 and that the postcard receipt indicating a date of 18 July 2007 was mailed by the USPTO. Accordingly, the Office accepts the copy of the translated claims as a replacement for the missing original documents with a deposit date of 18 July 2007.

CONCLUSION

Applicant's petition under 37 CFR 1.181 to accept a copy of the English translation of claims originally filed on 18 July 2007 is **GRANTED**.

A copy of the claims originally submitted on 18 July 2007 and resubmitted on 18 September 2011 is acceptable.

The Notification of Acceptance mailed on 28 August 2009 is hereby **VACATED**.

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing including issuance of a new Notification of Acceptance with a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 18 July 2007.

/Cynthia M. Kratz/
Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3286
Facsimile: (571) 273-0459

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

BARBARA A. SHIMEI
DIRECTOR, PATENTS & LICENSING
BAYER HEALTHCARE LLC- PHARMACEUTICALS
555 WHITE PLAINS ROAD, THIRD FLOOR
TARRYTOWN NY 10591

MAILED
MAR 25 2011
OFFICE OF PETITIONS

In re Application of	:	
BISCHOFF, et al	:	
Application No. 10/578,412	:	DECISION ON PETITION
Filed: December 26, 2006	:	
Docket No. BHC 031059 PCR-US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 13, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 3, 2010, 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 April 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) and the required 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 1628 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
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

MAILED
JAN 31 2011
OFFICE OF PETITIONS

In re Patent No. 7,544,626
Application No. 10/578,450
Filing Date: May 5, 2006
Issue Date: June 9, 2009
Attorney Docket No. **CHANZ1.001APC**

DECISION GRANTING PETITION

This is a decision on the renewed petition under 37 CFR 1.182, filed January 13, 2010, requesting issuance of duplicate Letters of Patent for the above-identified patent.

The petition is **granted**.

The file record discloses that the instant application matured into U.S. Patent No. 7,544,626 on June 9, 2009. Petitioner contends, however, that the patent was lost .

In view of the facts set forth in the petition, it is concluded that the original Letters of Patent was lost. The Office of Data Management is directed to issue duplicate Letters of Patent.

The petition fee of $400.00 was received.

Any questions concerning this decision may be directed to the undersigned at (571)272-3222. Any questions concerning issuance of the duplicate Letter of Patent should be directed to the Office of Data Management.

A copy of this decision is being forwarded to the Office of Data Management for issuance of a duplicate Letter of Patent.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc: Ollie Person—Office of Data Management FAX: 571-270-9764
Kimberly Terrell—Office of Data Management FAX: 571-270-9958

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WELDON F. GREEN
BOX 1111
31 ADELAIDE STREET EAST
TORONTO, ONTARIO M5C 2K6 CA CANADA

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of	:	
Walter Denis SITEMAN	:	
Application No. 10/578,468	:	DECISION ON PETITION
Filed: May 05, 2006	:	
Attorney Docket No. SITG008	:	

This is a decision on the petition, filed June 29, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of December 08, 2009, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before March 08, 2010.

Petitioner asserts that a timely reply was submitted via facsimile on March 08, 2010. A review of the Office records indicates that a response was received in the Office on March 08, 2010, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

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

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

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

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of December 08, 2009 is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

This application is being referred to Technology Center AU 3754 for appropriate action in the normal course of business on the reply received with petition.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : November 30, 2011

Patent No. :8034220
Ser. No. :10578548
Inventor(s) :Mario Melos, Pavia (IT)
Issued :October 11, 2011
Title :ELECTROCHEMICAL THERMODYNAMO

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481)*. This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. the processing fee set forth in 37 CFR 1. 17(i) (currently $130);
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS

	Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions
Electronic Filing	uspto.gov/ebc/index.html (must be registered as an e-filer) Support 1-866-217-9197 571-272-4100

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Any inquiry concerning this communication should be directed to Ms. A. Green at 571-272-9005.

For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (571) 272- 9005

Abelman, Frayne & Schwab
66 Third Avenue, 10th flr.
New York, NY 10017

/arg

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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SMITH PATENT OFFICE
1901 PENNSYLVANIA AVENUE N W
SUITE 901
WASHINGTON, DC 20006

Mail Date: 10/07/2010

Applicant	: Hideki Kotaki	: DECISION ON REQUEST FOR
Patent Number	: 7641721	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/578,626	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/08/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **584** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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ARNOLD & PORTER LLP
ATTN: IP DOCKETING DEPT.
555 TWELFTH STREET, N.W.
WASHINGTON DC 20004-1206

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Application of	:	
Nayar et al.	:	
Application No. 10/578,692	:	DECISION ON PETITION
Filed: August 26, 2006	:	
Attorney Docket No. ARR-0037-1 US	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed August 17, 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 final Office action mailed, October 30, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 31, 2010. A Notice of Abandonment was mailed May 17, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuation, (2) the petition fee of $810.00 (previously paid June 1, 2010), and (3) a proper statement of unintentional delay.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 12/857,831, filed August 17, 2010.

Further, 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.

Additionally, petitioner has submitted a duplicate $810.00 petition fee and a second unnecessary extension of time fee of $555.00. Accordingly, a total of $1,365.00 will be refunded to petitioner's deposit account in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

DEC 03 2010

OFFICE OF PETITIONS

In re Application of	:	
Lars LIDGREN, et *al.*	:	
Application No. 10/578,734	:	DECISION GRANTING PETITION
Filed: May 10, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **02405.0285-00**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 2, 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 October 26, 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 3733 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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FEB 13 2012

OFFICE OF PETITIONS

Syngenta Corp Protection, Inc.
410 Swing Road
Greensboro NC 27409

In re Application of :
Fowler, et al. :
Application No. 10/578,735 : ON PETITION
Filed: May 18, 2007 :
Attorney Docket No. 70333/UST

This is a decision on the petition under 37 CFR 1.137(b), filed January 26, 2012, to revive the above-identified application.

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

The above-identified application became abandoned June 26, 2011, for failure to file an appeal brief after a Notice of Appeal was filed on April 25, 2011. A Notice of Abandonment was mailed December 7, 2011.

The Request for Continued Examination and amendment filed January 26, 2012, are noted.

The request for an extension of time within the fifth month made January 26, 2012, is noted, but cannot be granted because the request was made outside the maximum statutory period for reply to the final Office action. The amount of $2,690.00 will be refunded, in due course

The address cited on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address cited on the petition. All future correspondence will be mailed solely to the address of record until appropriate written instructions to the contrary are received.

The application file is being forwarded to Technology Center, GAU 1613 for further processing.

In re Application No. 10/578,735

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Cc:
James D. Withers
PO Box 2049
McDonough, GA 30253

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Dorsey & Whitney LLP
Intellectual Property Department
250 Park Avenue
New York NY 10177

MAILED

JAN 28 2011

PCT LEGAL ADMINISTRATION

In re Application of
KUNSTMANN et al.
U.S. App. No. 10/578,816
PCT No.: PCT/EP2004/012442
International Filing Date: 03 November 2004
Priority Date: 03 November 2003
Attorney's Docket No.: 187735/US-479686-00017
For: METHOD AND APPARATUS FOR COATING OF IMPLANTS

DECISION ON PETITION UNDER 37 CFR 1.181

This decision is issued in response to applicants' "Petition to the Director under 37 CFR 1.181(b) to Withdraw Notice of Abandonment" filed in the United States Patent and Trademark Office (Office) on 05 January 2010. No petition fee is required.

BACKGROUND

On 03 November 2004, applicants filed international application PCT/EP2004/012442 which claimed a priority date of 03 November 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 03 May 2006.

On 04 May 2006, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia,* by: the requisite basic national fee; an English translation of the international application; and a preliminary amendment. The submission was assigned 10/578,816 and given a receipt date of 04 May 2006.

On 26 January 2007, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 31 January 2007, applicants filed an executed declaration.

On 12 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Acceptance of Application under 35 U.S.C. 371 (Form PCT/DO/EO/903) which indicated a date under 35 U.S.C. 371 of 31 January 2007.

On 06 November 2009, the United States Elected Office mailed a NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to provide the full U.S. Basic National Fee by 30 months (37 CFR 1.495(b)(2).

On 05 January 2010, applicants filed "Petition to the Director under 37 CFR 1.181(b) to Withdraw Notice of Abandonment." The petition is accompanied by a "Customer Copy" of Express Mail label no. "EV642787960US" showing a USPS "date in" date of 04 May 2006 and a USPS postal (barrel) stamp date of 03 May 2006.

DISCUSSION

The above-identified application was abandoned for failure to provide the full U.S. Basic National Fee by 30 months (37 CFR 1.495(b)(2). Applicants state in the present petition that the basic national fee was submitted to the United States Patent and Trademark Office on 03 May 2006 via Express Mail, pursuant to 37 CFR 1.10.

Petitioner has provided a copy of the "Express Mail" customer receipt bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing a "Date-In" of 04 May 2006 (5-4-6). However, the USPS (barrel) postal stamp, which appears on the Express Mail customer receipt, shows a postal date stamp of 03 May 2006. Therefore, a discrepancy exists under 37 CFR 1.10(d).

37 CFR 1.10(d) sets forth the procedures for filing a petition to accord a filing date as of the actual date of deposit with USPS, where the "date-in" or other notation is incorrectly entered by the USPS.

37 CFR 1.10(d) states:

> (d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
>
> (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be

corroborated by evidence from the USPS or that came into being after deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied Items (1) and (2) above.

Petitioner has not provided a satisfactory showing under 37 CFR 1.10(d)(3). In view of the discrepancy between the two dates shown on the "Express Mail" customer receipt, it would not be appropriate to grant applicants' request to accord the present application a 03 May 2006 receipt date at this time. Moreover, no corroborative evidence that came into being after the deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS has been presented. Thus, the evidence of record is insufficient to establish that on 03 May 2006 the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Pursuant to 37 CFR 1.10(f), applicant is required to submit further evidence (e.g., an affidavit by an appropriate USPS employee) to explain the apparent conflict between the dates shown on the "Express Mail" customer receipt.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived. Any petition filed under 37 CFR under 37 CFR 1.137(b) requesting that the application be revived must meet the criteria indicated in 37 CFR 1.137. This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

For the reasons discussed above, applicant's request that the office accord a date of deposit of 03 May 2006 to the initially filed national stage papers is **DISMISSED** without prejudice and the application remains abandoned.

If reconsideration on the merits of this decision is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181/1.10(d)." No additional petition fee is required.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3298

UNITED STATES PATENT AND TRADEMARK OFFICE

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED
JUN 15 2011
OFFICE OF PETITIONS

In re Patent of Bylehn et al.	:	
Patent No. 7,912,569	:	
Issued: March 22, 2011	:	NOTICE
Application No. 10/578,885	:	
Filed: July 6, 2006	:	
Attorney Docket No. 0104-0570PUS1		

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c), filed May 16, 2011.

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) 272-3230.

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE CA 94085-4040

In re Application of	:	
Townsend et al.	:	
Application No. 10/578,933	:	DECISION ON PETITION
Filed: May 8, 2006	:	
Attorney Docket No. 5926.P075	:	

This is a decision on the petition to revive on the grounds of unavoidable delay, filed June 2, 2010, 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 based on failure to receive the Office action.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the final Office action mailed November 4, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on February 5, 2010.

Petitioner asserts that the Office action dated November 4, 2009 was not received.

A review of the written record indicates the a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was received on October 10, 2008. However, it was never processed by the USPTO. As stated in MPEP 402.05, a revocation of the power of attorney becomes effective on the date that the revocation is *received* in the Office, not on the date of acceptance.

As the Revocation of Power of Attorney was never processed, the final Office action of November 2009 was erroneously mailed to the wrong address.

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.

On August 16, 2010, the Revocation of Power of Attorney was processed and the correspondence address is now correctly associated with Customer Number 08791.

The $540.00 petition fee will be credited to petitioner's deposit account.

This application is being referred to the Technology Center AU 3662 for processing of the Request for Continued Examination (RCE) under 37 CFR 1.114 filed on June 24, 2010.

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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HENRY M. SINAI
(IP-PARTNERSHIP)
P.O. BOX 669
RAANANA 43350 IL ISRAEL

MAILED
MAR 09 2011
OFFICE OF PETITIONS

In re Application of :
Zvi Barak :
Application No. 10/579,053 : ON PETITION
Filed: May 11, 2006 :
Attorney Docket No: CB3-2559-US :

This is a decision on the petition filed February 8, 2011 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed May 26, 2010. A shortened statutory period of three months was set for replying to the non-Final Office Action. No response having been timely filed, this application became abandoned August 27, 2010. Accordingly, a Notice of Abandonment was mailed January 19, 2011.

This matter is being referred to Technology Center 2614 for appropriate action on the amendment filed February 8, 2011.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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

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

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

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

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

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OCT 2 1 2010

OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
David Woolfson, et al.	:	
Application No. 10/579,196	:	DECISION ON PETITION
Filed: April 16, 2007	:	TO WITHDRAW
Attorney Docket No. 1817-0171PUS1	:	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 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 James M. Slattery on behalf of all attorneys of record who are associated with customer No. 02292. All attorneys/agents associated with the Customer Number 02292 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

There is an outstanding Office action mailed August 27, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: DAVID WOOLFSON
4 DARTMOUTH ROAD
DUBLIN 6, IRELAND

cc: LANCASTRIA LIMITED
1 STOKES PLACE,
ST STEPHENS GREEN
DUBLIN, IRELAND 2

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/579,196	04/16/2007	David Woolfson	1817-0171PUS1

CONFIRMATION NO. 6683

POWER OF ATTORNEY NOTICE

2292
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

OC000000044088029

Date Mailed: 10/20/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/13/2010.

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

/amwise/

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/23/11

TO SPE OF : ART UNIT: 3672

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/579,318 Patent No. 7,927,043

CofC mailroom date 8/15/11

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

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

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

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

Comments: Claim 5, col 8, line 8 "as claimed claim 4" should read -- as claimed in claim 1 -- is denied because examiner's amendment of 12/17/2010 made the following change original claim 4 lines 1-2 "claim 1" has been changed to --Claim 4 to provide antecedent basis for "the hollow cavity".

SPE

3672
Art Unit

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date	: 10/4/2011
Patent No.	: 7,937,455 B2
Serial No.	: 10/579,318
Inventor(s)	: Ota
Issue Date	: July 5, 2011
Title	: **ROCKBOLTS MADE OF STEEL PIPES**
Doc./File No.	: **2950-061389**

Re: Consideration for Certificate of Correction

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

Respecting the alleged error(s) in your request, your request for a certificate of correction is denied. Please see the attached PTOL-306 Document (Spe Response). No correction is in order here at this time.

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

Further consideration will be given concerning this matter upon receipt of a request for **Reconsideration** (reconsideration should be accompanied by supporting document(s) such as, amendment, postcard receipt, 1449/892, etc.) and should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385
Mary F. Diggs, *Supervisor* (703) 756-1580
Decisions & Certificates of Correction Branch
ernest.white@uspto.gov

THE WEBB LAW FIRM, P.C.
ONE GATEWAY CENTER
420 FT. DUQUESNE BLVD, SUITE 1200
PITTSBURGH PA 15222

ECW

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ROTHWELL, FIGG, ERNST & MANBECK,
P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON DC 20005

MAILED
OCT 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Tormod NjØlstad	:	
Application No. 10/579334	:	
Filing or 371(c) Date: 05/15/2006	:	ON PETITION
Patent Number: 7339684	:	
Issue Date: 03/04/2008	:	
Title of Invention:	:	
PROXIMITY DETECTOR	:	

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

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

MAILED
FEB 11 2011
OFFICE OF PETITIONS

In re Application of	:	DECISION ON APPLICATION
Stock et al.	:	FOR PATENT TERM
Patent Number: 7,794,965	:	ADJUSTMENT RECONSIDERATION
Issue Date: 09/14/2010	:	and
Application No. 10/579369	:	NOTICE OF INTENT TO ISSUE
Filing or 371(c) Date: 05/15/2006	:	CERTIFICATE OF CORRECTION
Attorney Docket Number:	:	
2008725-0051	:	

This is a decision on the petition filed on filed November 12, 2010 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 zero (0) 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 zero (0) days is **GRANTED**.

A review of Office records confirms that the application was abandoned on September 14, 2004; that a petition to revive the application was filed on May 15, 2006, and that a Decision granting the petition to revive the application was mailed on August 14, 2006. Pursuant to 37 CFR 1.704(c)(3), the period of delay begins on the date of abandonment, September 14, 2004, and ends on the date of mailing of the decision reviving the application, August 14, 2006, or 700 days.

A review of Office records also reveals that the Office also errantly neglected to assess a reduction in accordance with 37 CFR 1.704(c)(8), in connection with the filing of a Information Disclosure Statement ("IDS"), on April 6, 2010, after filing a Request for Continued Examination ("RCE"), on April 5, 2010. Pursuant to 37 CFR 1.704(c)(8), the patent term is reduced by a period of one (1) day.

A review of Office records also reveals that the Office also errantly neglected to assess a reduction in accordance with 37 CFR 1.704(c)(10), in connection with the filing of a Transmittal containing copies of all daggered references, after the mailing of the Notice of Allowance wherein the Examiner indicated that all of the references previously filed and marked with a

dagger had already been considered. Pursuant to 37 CFR 1.704(c)(10), the reduction of 110 days commenced on May 28, 2010, the date of the filing of the Transmittal, and ended September 14, 2010, the date the patent issued.

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

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The 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 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 **zero (0) days**.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,794,965 B2

DATED : September 14, 2010

INVENTOR(S) : Stock 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 497 days.

Delete the phrase "by 497 days" and insert – by 0 days--

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KRATZ, QUINTOS & HANSON, LLP
1420 K Street, N.W.
4th Floor
WASHINGTON DC 20005

MAILED
DEC 15 2010
OFFICE OF PETITIONS

In re Application of	:	
Akiyoshi Okamoto et al.	:	DECISION ON PETITION
Application No. 10/579,397	:	TO WITHDRAW
Filed: May 15, 2006	:	FROM RECORD
Attorney Docket No. **060346**	:	

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36(b), filed November 22, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks the name of the first inventor or the assignee of record that is associated with the address listed in the request. Therefore, the change of correspondence address is considered improper.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the 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 inquires concerning this decision should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

In re Application of	:	
Riddington et al.	:	
Application No. 10/579404	:	ON REQUEST FOR
Filing or 371(c) Date: 03/28/2007	:	RECONSIDERATION OF
Atty Docket No.:	:	PATENT TERM ADJUSTMENT
088245-1052	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed April 6, 2011. Applicant submits that the proper patent term adjustment to be indicated on the patent is 627 days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

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

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

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

Rather than file 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).

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) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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

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ROBERT D. SHEDD, PATENT OPERATIONS
THOMSON LICENSING LLC
P.O. BOX 5312
PRINCETON NJ 08543-5312

In re Application of	:	
MOHAN, et al	:	
Application No. 10/579,422	:	DECISION ON PETITION
Filed: May 11, 2006	:	
Attorney Docket No. PTU030008	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before December 27, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed September 27, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on December 28, 2010.

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

The issue and publication fees have been charged to Deposit Account 07-0832, since payment of these fees are required as a condition for revival under the unintentional provisions of 37 CFR 1.137(b).

The Office acknowledges the submission of a RCE and IDS filed with the petition dated December 30, 2010.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being

mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

The application is being referred to Technology Center 2614 for further processing by the Examiner in the normal course of business of the RCE and IDS.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: JEFFREY M. NAVON
2 INDEPENDENCE WAY,
SUITE 200
PRINCETON, NJ 08540

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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SEP 07 2011

OFFICE OF PETITIONS

In re Patent No. 7,986,306	:	
Eich et al.	:	DECISION ON APPLICATION
Issue Date: July 26, 2011	:	FOR
Application No. 10/579,483	:	PATENT TERM ADJUSTMENT
Filed: May 16, 2006	:	
Attorney Docket No.026032-5054	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 CFR §1.705(b)" filed August 31, 2011, requesting the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected to eight hundred twenty-one (821) days.

The application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED AS UNTIMELY FILED**.

Patentees are given **TWO (2) MONTHS** to respond to this decision. No extensions of time will be granted under 37 CFR 1.136(a).

35 U.S.C. 154(b) provides for patent term adjustment for examination delay. Pursuant to 35 U.S.C. 154(b)(3)(B) and implementing regulation 37 CFR 1.705, an applicant shall receive an initial determination of patent term adjustment with the mailing of the Notice of Allowance and shall be given one opportunity to request reconsideration of that determination by way of filing of an application for patent term adjustment prior to the payment of the issue fee.

On March 14, 2011, the Office mailed an initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application, indicating that the patent term adjustment at the time of the mailing of the notice of allowance was 371 days. The issue fee payment was received in the Office on June 13, 2011. No filing of an application for patent term adjustment under 37 CFR 1.705(b) preceded the payment of the issue fee. On July 26, 2011, the above-identified application matured into U.S. Patent No. 7,986,306 with a revised patent term adjustment of 677 days.

Patentees dispute the reduction of 98 days pursuant to 37 CFR 1.704(c)(7) associated with the submission of a reply with an omission on September 27, 2010. Additionally, patentees assert that they are entitled to a period of adjustment of 46 days pursuant to 37 CFR 1.702(a)(2) for the period "between January 27, 2011 (4 months after the submission of the original, compliant amendment) and March 14, 2011 (mailing date of the Notice of Allowance and Fees Due/Notice of Allowability.)" *Petition, p. 2.*

The Office notes that the initial Determination of Patent Term Adjustment mailed March 14, 2011, was based in part on the reduction of 98 days associated with the submission of a reply with an omission on September 27, 2010. The period for filing an application for patent term adjustment requesting reconsideration of the initial Determination of Patent Term Adjustment at the time of mailing of the notice of allowance ended June 13, 2011, upon payment of the issue fee. Accordingly, it is appropriate to dismiss this petition as untimely filed under 37 CFR 1.705(b).

Consideration under 37 CFR 1.705(d) is not appropriate. As stated in MPEP 2730, § 1.703(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.**

The issues raised should have been timely raised on application for patent term adjustment under 37 CFR 1.705(b).

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DORSEY & WHITNEY LLP - NEW YORK (PT/18)
ATTENTION: INTELLECUAL PROPERTY/PATENT DEPARTMENT
250 PARK AVENUE
NEW YORK, NY 10177-1500

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APR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Noriyuki SUZUKI, et *al.*	:	
Application No. 10/579,544	:	DECISION GRANTING PETITION
Filed: March 6, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **187765/US-465122-00026**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 13, 2011, 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 16, 2011 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 3725 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.*

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	10579642
Filing Date	03-Nov-2008
First Named Inventor	Robert Kasowski
Art Unit	1761
Examiner Name	JOSEPH ANTHONY
Attorney Docket Number	KAW-103US
Title	PROTECTIVE BARRIER COMPOSITION COMPRISING REACTION OF PHOSPHOROUS ACID WITH AMINES APPLIED TO A SUBSTRATE

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 31344

The reason(s) for this request are those described in 37 CFR:

10.40(c)(1)(vi)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	Mr. Robert V. Kasowski
Address	2153 Brinton's Bridge Road
City	West Chester
State	PA
Postal Code	19382
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Lawrence E. Ashery/
Name	Lawrence E. Ashery
Registration Number	34515

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

Decision Date : July 18,2011

In re Application of :

Robert Kasowski

Application No : 10579642

Filed : 03-Nov-2008

Attorney Docket No : KAW-103US

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed July 18,2011

The request is **APPROVED.**

The request was signed by Lawrence E. Ashery (registration no. 34515) on behalf of all attorneys/agents associated with Customer Number 31344 . All attorneys/agents associated with Cusotmer Number 31344 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	Mr. Robert V. Kasowski
Name2	
Address 1	2153 Brinton's Bridge Road
Address 2	
City	West Chester
State	PA
Postal Code	19382
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

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

PATRICK J. HALLORAN
3141 MUIRFIELD RD.
CENTER VALLEY PA 18034

MAILED

JAN 20 2012

OFFICE OF PETITIONS

In re Application of	:	
Jungbluth, et al.	:	
Application No. 10/579,655	:	DECISION
Filed/Deposited: 10 August, 2007	:	
Attorney Docket No. API-03-15-US	:	

This is a decision on the petition filed on 5 October, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

NOTE:

Following what the Office found to be Petitioner's failure to reply timely and properly in the instant application to a Notice on 25 May, 2011, the Office mailed a Notice of Abandonment on 28 June, 2011.

Petitioner apparently chose not to reply timely to the 28 June, 2011, Notice of Abandonment—*e.g,* to seek relief pursuant to 37 C.F.R. §1.181.

Rather, on 16 September, 2011, and again on 19 September, 2011, Petitioner replied to the Notice of 25 May, 2011, with a submission and then a "supplement," respectively.

The application remained abandoned and Petitioner took no action at that time to alter that state.

On 5 October, 2011, Petitioner:

- filed a petition pursuant to 37 C.F.R. §1.137(b) to revive the application and a fee for the petition;
- also filed a request for a refund of the fee because Petitioner felt the abandonment was not proper—and the Office replied with a refund on 6 October, 2011.

At no time within two months of the 28 June, 2011, Notice of Abandonment did Petitioner properly seek relief pursuant to 37 C.F.R. §1.181.

The instant petition pursuant to 37 C.F.R. §1.137(b) is present in the record, however, it is present without a fee because Petitioner insisted upon having the fee refunded.

The Office cannot and will not address such a petition substantively in the absence of the fee.

The petition pursuant to 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment," and/or "Renewed Petition under 37 C.F.R. §1.137(b)."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

Petitioner does not appear to have addressed properly the requirements under the rule (*e.g.*, fees).

Any deficiencies must be overcome.

BACKGROUND

The record reflects as follows:

The Examiner mailed requirements for sequence disclosures on 27 November, 2009, and 23 June, 2010, to which Petitioner filed replies on 27 April, 2010, and 25 October, 2010, respectively, however the record also evidences that neither reply was proper.

Thereafter, Petitioner failed to reply timely and properly to the Examiner's third Notice as to sequence disclosures mailed on 25 May, 2011, with reply due absent extension of time on or before 25 June, 2011.

(Petitioner appears to have filed a set of papers on 20 June, 2011, however, that was the third in Petitioner's series of submissions, and again the Examiner found that the reply was not proper.)

On 28 June, 2011, the Office mailed a Notice of Abandonment.

Petitioner did not reply to the 28 June, 2011, Notice.

Rather, on 16 September, 2011, and then on 19 September, 2011, Petitioner replied to the Notice of 25 May, 2011, with a submission and then a "supplement," respectively, with a request and fee for extension of time.

However, the application remained abandoned pursuant to the 28 June, 2011, Notice, and Petitioner took no action to alter that state.

On 5 October, 2011, Petitioner:

- filed a petition pursuant to 37 C.F.R. §1.137(b) to revive the application and a fee for the petition;
- also filed a request for a refund of the fee because Petitioner apparently considered the abandonment not proper—and the Office replied with a refund on 6 October, 2011.

At no time within two months of the 28 June, 2011, Notice of Abandonment did Petitioner properly seek relief pursuant to 37 C.F.R. §1.181. Thereafter, Petitioner no longer had the right to call upon that provision of the Rules of Practice for relief.

(The Rules of Practice[1] and the guidance in Commentary in the Manual of Patent Examining Procedure (MPEP)[2] provide protections and benefits for applicants and practitioners, however, those protections and benefits are unavailable when those rules and guidance are not complied with/followed.)

The instant petition pursuant to 37 C.F.R. §1.137(b) is present in the record without a fee, and the Office cannot and will not address such a petition substantively in the absence of the fee.

Thus, Petitioner failed to comply with the requirements under the Rule.

Petitioner is cautioned that the failure to timely and properly remedy any deficiencies herein—including those as to the petition fee—may be considered indicia of delay that is other than unintentional.

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1 *See:* 37 C.F.R.: http://www.uspto.gov/web/offices/pac/mpep/documents/appxr.htm .

2 *See:* MPEP: http://www.uspto.gov/web/offices/pac/mpep/index.htm .

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

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

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

STATUTES, REGULATIONS

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

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

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

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

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[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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

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

> them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[6]

As to Allegations of
Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

As discussed above, it does not appear that Petitioner has satisfied the requirements under the rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II) as to a petition pursuant to 37 C.F.R. §1.137.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **dismissed**.

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATRICK J. HALLORAN
3141 MUIRFIELD RD.
CENTER VALLEY PA 18034

MAILED
MAR 22 2012
OFFICE OF PETITIONS

In re Application of :
Jungbluth, et al. :
Application No. 10/579,655 : DECISION
Filed/Deposited: 10 August, 2007 :
Attorney Docket No. API-03-15-US :

This is a decision on the petition filed on 23 January, 2012, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

BACKGROUND

The record reflects as follows:

The Examiner mailed requirements for sequence disclosures on 27 November, 2009, and 23 June, 2010, to which Petitioner filed replies on 27 April, 2010, and 25 October, 2010, respectively, however the record also evidences that neither reply was proper.

Thereafter, Petitioner failed to reply timely and properly to the Examiner's third Notice as to sequence disclosures mailed on 25 May, 2011, with reply due absent extension of time on or before 25 June, 2011.

(Petitioner appears to have filed a set of papers on 20 June, 2011, however, that was the third in Petitioner's series of submissions, and again the Examiner found that the reply was not proper.)

On 28 June, 2011, the Office mailed a Notice of Abandonment.

Petitioner did not reply to the 28 June, 2011, Notice.

Rather, on 16 September, 2011, and then on 19 September, 2011, Petitioner replied to the Notice of 25 May, 2011, with a submission and then a "supplement," respectively, with a request and fee for extension of time. However, the application remained abandoned pursuant to the 28 June, 2011, Notice, and Petitioner took no action to alter that state.

On 5 October, 2011, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) to revive the application and a fee for the petition; also filed a request for a refund of the fee because Petitioner apparently considered the abandonment not proper—and the Office replied with a refund on 6 October, 2011. At no time within two months of the 28 June, 2011, Notice of Abandonment did Petitioner properly seek relief pursuant to 37 C.F.R. §1.181. Thereafter, Petitioner no longer had the right to call upon that provision of the Rules of Practice for relief. The original petition pursuant to 37 C.F.R. §1.137(b) was present in the record without a fee, and the Office does not address such a petition substantively in the absence of the fee. The petition was dismissed on 20 January, 2012.

Petitioner re-advanced the petition on 23 January, 2012, this time with the fee, and pointed to the previously filed reply in the form of the 16 and 19 September, 2011, sequence listings, and made the statement of unintentional delay.

Petitioners are reminded that the Rules of Practice (37 C.F.R.)[1] and the guidance in Commentary in the Manual of Patent Examining Procedure (MPEP)[2] provide protections and benefits for applicants and practitioners, however, those protections and benefits are unavailable when those rules and guidance are not complied with/followed.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

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

Out of an abundance of caution, Petitioners always are reminded that those registered to practice <u>and</u> all others who make representations before the Office **must** inquire into the underlying facts

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1 *See:* 37 C.F.R.: http://www.uspto.gov/web/offices/pac/mpep/documents/appxr.htm .

2 *See:* MPEP: http://www.uspto.gov/web/offices/pac/mpep/index.htm .

of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

STATUTES, REGULATIONS

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

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

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[6]

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[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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

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

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

As to Allegations of
Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Technology Center/AU 1645 for further processing in due course.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
AUG 19 2010
OFFICE OF PETITIONS

In re Patent No. 7,624,430	:	DECISION ON REQUEST FOR
GILEK et al.	:	RECONSIDERATION OF
Issue Date: November 24, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/579,685	:	NOTICE OF INTENT TO ISSUE
Filed: May 17, 2006	:	CERTIFICATE OF CORRECTION
Atty Docket No. 11371-117	:	

This is a decision on the petition filed on January 21, 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 four hundred seventy-two (472) 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 seventy-one (471) days**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on May 18, 2009, and ends on June 11, 2009, the day before the RCE was filed, and is 25 (not 26) days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 471, not 472 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a

certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, 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 37 CFR 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will charge the Deposit Account for 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 seventy-one (471) 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 : 7,624,430 B2

DATED : Nov. 24, 2009 **DRAFT**

INVENTOR(S) : GILEK 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 446 days

Delete the phrase "by 446 days" and insert – by 471 days--

Day : Wednesday

PALM INTRANET

Date: 8/18/2010
Time: 12:27:48

PTA Calculations for Application: 10/579685			
Application Filing Date:	05/17/2006	PTO Delay (PTO):	462
Issue Date of Patent:	11/24/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	16
Post-Issue Petitions:	0	Total PTA (days):	471
PTO Delay Adjustment:	25		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
59	08/18/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	25		
55.5	11/04/2009	PTA 36 MONTHS			
55	11/24/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
54	10/26/2009	EXPORT TO FINAL DATA CAPTURE			
53	10/23/2009	DISPATCH TO FDC			
52	10/22/2009	MAIL RESPONSE TO 312 AMENDMENT (PTO-271)			
51	10/21/2009	RESPONSE TO AMENDMENT UNDER RULE 312			
50	10/07/2009	AMENDMENT AFTER NOTICE OF ALLOWANCE (RULE 312)		16	52
49	10/14/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
48	10/07/2009	ISSUE FEE PAYMENT VERIFIED			
47	10/07/2009	ISSUE FEE PAYMENT RECEIVED			
46	09/03/2009	FINISHED INITIAL DATA CAPTURE			
45	08/14/2009	EXPORT TO INITIAL DATA CAPTURE			
44	08/10/2009	MAIL NOTICE OF ALLOWANCE			
43	08/07/2009	ISSUE REVISION COMPLETED			
42	08/07/2009	DOCUMENT VERIFICATION			
41	08/07/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
40	08/04/2009	NOTICE OF ALLOWABILITY			
39	07/08/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
38	06/16/2009	DATE FORWARDED TO EXAMINER			
37	06/12/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			

36	06/16/2009	DISPOSAL FOR A RCE / CPA / R129			
35	06/16/2009	DATE FORWARDED TO EXAMINER			
34	06/12/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
33	06/12/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
32	05/18/2009	MAIL ADVISORY ACTION (PTOL - 303)			
31	05/15/2009	ADVISORY ACTION (PTOL-303)			
30	05/14/2009	DATE FORWARDED TO EXAMINER			
29	05/12/2009	AMENDMENT AFTER FINAL REJECTION			
28	03/12/2009	MAIL FINAL REJECTION (PTOL - 326)			
27	03/11/2009	FINAL REJECTION			
26	03/10/2009	DATE FORWARDED TO EXAMINER			
25	01/21/2009	RESPONSE AFTER NON-FINAL ACTION			
24	10/21/2008	MAIL NON-FINAL REJECTION	462		6
23	10/20/2008	NON-FINAL REJECTION			
22	10/09/2008	CASE DOCKETED TO EXAMINER IN GAU			
19	05/17/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
18	08/27/2008	CASE DOCKETED TO EXAMINER IN GAU			
17	02/05/2008	CASE DOCKETED TO EXAMINER IN GAU			
16	12/31/2007	CASE DOCKETED TO EXAMINER IN GAU			
15	10/06/2007	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	05/17/2006	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
13	05/17/2006	REFERENCE CAPTURE ON IDS			
12	05/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	05/17/2006	PRELIMINARY AMENDMENT			
9	06/28/2007	PG-PUB ISSUE NOTIFICATION			
8	05/17/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	04/24/2007	APPLICATION DISPATCHED FROM OIPE			
6	05/17/2006	371 COMPLETION DATE			
5	03/21/2007	SENT TO CLASSIFICATION CONTRACTOR			
4	03/21/2007	NOTICE OF DO/EO ACCEPTANCE MAILED			
3	06/20/2006	CLEARED BY OIPE CSR			
2	06/20/2006	CLEARED BY OIPE CSR			
1	05/17/2006	INITIAL EXAM TEAM NN			

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NELSON MULLINS RILEY & SCARBOROUGH LLP
FLOOR 30, SUITE 3000
ONE POST OFFICE SQUARE
BOSTON MA 02109

MAILED
MAR 11 2011
PCT LEGAL ADMINISTRATION

In re Application of :
ZELDER, Oskar, et al. :
U.S. Application No.: 10/579,690 :
PCT No.: PCT/IB2004/004429 :
International Filing Date: 17 December 2004 :
Priority Date: 18 December 2003 :
Att. Docket No.: BGI-158US :
For: METHOD FOR THE PREPARATION :
OF LYSINE BY FERMENTATION OF :
CORYNEBACTERIUM :
GLUTAMICUM :

DECISION

This is a decision in response to applicant's petition under 37 CFR 1.181 for a corrected Notice of Acceptance and filing receipt, filed in the United States Patent and Trademark Office on 28 July 2010.

BACKGROUND

On 10 January 2007, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 09 March 2007, applicant submitted a declaration of the inventors.

On 29 August 2007, a Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt were mailed giving the application a 35 U.S.C. §371(c)(1), (c)(2) and (c)(4) date of 06 March 2007.

On 28 July 2010, applicants filed this petition for a corrected Notice of Acceptance and filing receipt.

DISCUSSION

The Notification of Acceptance mailed 29 August 2007, indicated that the declaration in compliance with 37 CFR 1.497(a)-(b) was received on 06 March 2007. A review of the file reveals that a declaration in compliance with 37 CFR 1.497(a)-(b) was not received until 09 March 2007. As such, the completion dates for the requirements under 35 U.S.C. §371(c)(1), (c)(2) and (c)(4) and for all requirements under 35 USC 371 are 09 March 2007, not 06 March 2007.

CONCLUSION

For the reasons discussed above, the Petition Under 37 CFR 1.181 is **GRANTED**.

The Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt mailed 29 August 2007 are **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of Patent Application Processing for further processing in accordance with this decision, including the mailing of a corrected Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt.

/Erin P. Thomson/

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,717	06/11/2008	Kouki Ikarashi	290840US3PCT	3496

22850 7590 01/11/2012
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
TRAN, THIEN S

ART UNIT	PAPER NUMBER
3742	

NOTIFICATION DATE	DELIVERY MODE
01/11/2012	ELECTRONIC

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

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

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

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

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Alexandria, VA 22313-1450
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of:
IKARASHI, KOUKI et al
Serial No. 10/579,717
Filed: June 11, 2008
Docket: 290840US3PCT
Title: METAL EVAPORATION HEATING ELEMENT AND METHOD FOR EVAPORATING METAL

DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the petition filed January 9, 2012 under 37 CFR 1.181 requesting a complete Office action of the correct claims because the Office action mailed on November 9, 2011 failed to examined the amended claims 1-16 without multiple dependency as filed on May 17, 2006.

The petition is **granted.**

In the interest of expediency, the copy of the amendment filed on May 17, 2006 attached with the current petition is accepted, entered and treated as a Preliminary Amendment. The requested relief for a supplemental Office action to examine the correct claims is granted. The last Office action mailed November 9, 2011 is hereby withdrawn.

The examiner has been requested to issue a new supplemental Office action to treat the amended claims 1-16 as filed with the petition. A supplemental Office action in accordance with MPEP § 710.06 will be mailed in due course.

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

PETITION GRANTED.

Robin O. Evans

Robin Evans, Acting Director
Technology Center 3700

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

MAILED
FEB 01 2012
PCT LEGAL ADMINISTRATION

In re Application of :
IKARASHI, et al. :
Application No.: 10/579,717 : DECISION ON PETITION
PCT No.: PCT/JP2004/017023 :
Int. Filing Date: 16 November 2004 : UNDER 37 CFR 1.181
Priority Date: 20 November 2003 :
Atty docket no.: 290840US3PCT :
For: METAL EVAPORATION HEATING ELEMENT :
AND METHOD FOR EVAPORATING METAL :

This is a decision on applicant's request for corrected notice of acceptance filed 04 August 2008 in the United States Patent and Trademark Office (USPTO). The filing is being treated as a petition under 37 CFR 1.181. No petition fee is due.

On 14 April 2008, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date; as well as, an English translation of the international application as filed. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 11 June 2008, applicant filed a response indicating that the above items had been provided to the USPTO on 17 May 2006. Applicant's response included true and complete copies of the papers and a stamped postcard listing the declaration and English translation.

On 02 July 2008, applicant was mailed a "Notification of Acceptance" (Form PCT/DO/EO/903) indicating a 371 date of receipt of the 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements as 11 June 2008.

On 04 August 2008, applicant filed the present petition claiming that the 371 requirements were satisfied on 17 May 2006.

The Manual of Patent Examining Procedure (MPEP) section 503 explains that: "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."

As detailed above, applicant's 11 June 2008 filing included a stamped return postcard. As such, it is proper to grant applicant's petition at this time.

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The application has an international filing date of 16 November 2004 under 35 U.S.C. 363 and will be given a date of **17 May 2006** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

The "Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) mailed 02 July 2008 is hereby **VACATED**.

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for further processing in accordance with this decision, namely the issuance of a Form PCT/DO/EO/903 and a corrected filing receipt indicating the correct 371 date as detailed above.

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United States Patent and Trademark Office

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Jerome J. Norris
1901 Pennsylvania Avenue, N W
Suite 305
Washington DC 20006

MAILED

MAY 24 2011

PCT LEGAL ADMINISTRATION

In re Application of	:	
Schneider et al.	:	
Application No.: 10/579,786	:	DECISION
PCT No.: PCT/US03/04507	:	
Int. Filing Date: 19 February 2003	:	ON
Earliest Priority Date: 22 February 2002	:	
Attorney Docket No.: 25815-100-03	:	PETITION
For: Magnetic Label Stock Material	:	

This is in response to the petition under 37 CFR 1.137(b) filed on 12 January 2011, which is also includes a renewed submission under 37 CFR 1.497(d).

DISCUSSION

Petition Under 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed on 12 January 2011 in the above-captioned application is hereby **GRANTED**, as follows:

Petitioner states that "the entire delay in filing the required reply from the due date of the required reply until the filing of a grantable petition under37 C.F.R. 1.137(b) was unintentional."

A review of the application file reveals that applicant has paid the petition fee. The required reply was a "proper response" to the Decision mailed on 28 September 2006; the instant submission satisfies that requirement. No terminal disclaimer is required.

The above-identified application has been abandoned for an extended period of time. The USPTO is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the USPTO).

Submission Under 37 CFR 1.497(d)

In a Decision mailed on 28 September 2006, the submission under 37 CFR 1.497(d) filed on 23 August 2006 was dismissed, without prejudice, because

> Regarding requirement (1), applicants have provided a purported "statement from: Jon B. Schneider," but this statement has not been signed by Mr. Schneider. Accordingly, requirement (1) has not been satisfied.
>
> Regarding requirement (3), the "Written assent of assignee" portion of the correspondence filed on 23 August 2006 states that "Magnum Magnetics Corporation agrees to the deletion of Jon B. Schneider as a co-inventor of this

application," and is signed by C. Allen Love in the capacity of "President" of Magnum Magnetics Corporation...The instant submission does not satisfy 37 CFR 3.73(b)(1) because it is not accompanied by statement affirmatively identifying the assignee and supported by documentary evidence of a chain of title (and a request to record it) or by a statement specifying the reel and frame number where such documentation may be found in the records of the USPTO. Therefore, requirement (3) has not been satisfied. Based on the totality of the evidence of record, it would not be appropriate to conclude that the requirements of 37 CFR 1.497(d) have been satisfied.

In response, with respect to requirement (1), counsel has filed an appropriate statement by Mr. Schneider.

Regarding requirement (3), applicant filed a "Written assent of assignee" on 23 August 2006, implying that Magnum Magnetics Corporation is an assignee of the instant application. 37 CFR 1.497(d)(3) requires "If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter)." This is consistent with the policy described at MPEP 324 ("When an assignee first seeks to take action in a matter before the Office with respect to a patent application, patent, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Director."). Here, the action to be taken is the assignee's consent to the change in inventorship. MPEP 324 expressly lists the situation where an assignee "consents to the correction of inventorship" as among the situations requiring submission of a statement under 37 CFR 3.73(b). Therefore, since applicant previously indicated that this application was assigned, an acceptable statement under 37 CFR 3.73(b) is required. Since no such statement accompanied the renewed submission under 37 CFR 1.497(d), it would not be appropriate to grant the requested relief on the basis of the present record.

DECISION

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

The request under 37 CFR 1.497(d) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497(d)."

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/George Dombroske/
George M. Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283

cc: Stoneman Law Patent Group
P.O. Box 40070
Phoenix, AZ 85067-0070

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MAILED

JUL 22 2011

PCT LEGAL ADMINISTRATION

Jerome J. Norris
1901 Pennsylvania Avenue, N W
Suite 305
Washington DC 20006

In re Application of	:	
Medley	:	
Application No.: 10/579,786	:	DECISION
PCT No.: PCT/US03/04507	:	
Int. Filing Date: 19 February 2003	:	ON
Earliest Priority Date: 22 February 2002	:	
Attorney Docket No.: 25815-100-03	:	PETITION
For: Magnetic Label Stock Material	:	

This is in response to the renewed submission under 37 CFR 1.497(d) filed on 09 June 2011.

DISCUSSION

In a Decision mailed on 24 May 2011, the submission under 37 CFR 1.497(d) filed on 12 January 2011 was dismissed, without prejudice, because

> Regarding requirement (3), applicant filed a "Written assent of assignee" on 23 August 2006, implying that Magnum Magnetics Corporation is an assignee of the instant application. 37 CFR 1.497(d)(3) requires "If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter)." This is consistent with the policy described at MPEP 324 ("When an assignee first seeks to take action in a matter before the Office with respect to a patent application, patent, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Director."). Here, the action to be taken is the assignee's consent to the change in inventorship. MPEP 324 expressly lists the situation where an assignee "consents to the correction of inventorship" as among the situations requiring submission of a statement under 37 CFR 3.73(b). Therefore, since applicant previously indicated that this application was assigned, an acceptable statement under 37 CFR 3.73(b) is required. Since no such statement accompanied the renewed submission under 37 CFR 1.497(d), it would not be appropriate to grant the requested relief on the basis of the present record.

In response, counsel states (in part) that "we can now definitively conclude that there has never been an assignment recorded in the instant application," and that "obtaining the assent of an assignee is not applicable to the instant application." Counsel is reminded that the requirements for relief under 37 CFR 1.497(d) involve a determination as to whether an assignment has been executed, as opposed to recorded. It is presumed that counsel has performed the due diligence required under 37 CFR 11.18(b)(2) and, as such, the statements with respect to the lack of an assignee are being accepted. If such an interpretation is in error, counsel is required to promptly notify this Office.

The duplicate $65.00 surcharge under 37 CFR 1.492(h) paid on 12 January 2011 was not required, and is being refunded to counsel.

DECISION

The request under 37 CFR 1.497(d) is **GRANTED**.

This application is being returned to the Office of Patent Application Processing for further processing, including processing of the Power of Attorney signed by the inventor and filed on 13 January 2011. The date of the application under 35 U.S.C. 371(c)(1), (2) and (4) is **12 January 2011**.

/George Dombroske/
George M. Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283

cc: Stoneman Law Patent Group
P.O. Box 40070
Phoenix, AZ 85067-0070

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/16/2011

TO SPE OF : ART UNIT 1762 Wu David (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/579808 Patent No.: 7875693

CofC mailroom date: 4/22/2011

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

Certificates of Correction Branch
703-756-1571

Thank You For Your Assistance

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

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

Comments: The change to structure 5 on col. 13, lines 2-25 will not be entered because the patented formula is the formula of page 22, structure 5 of the originally filed application, which makes chemical sense in the instantly claimed invention. I see no particular basis to say that the applicant meant the formula of the proposed COC. Note the moving of the isocyanatoalkoxysilane residue from the N to the R.

D. Wu
SPE

1762
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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NOVARTIS VACCINES AND DIAGNOSTICS INC.
INTELLECTUAL PROPERTY- X100B
P.O. BOX 8097
Emeryville CA 94662-8097

MAILED

MAY 13 2011

PCT LEGAL ADMINISTRATION

In re Application of	:	
CHOO, Qui-Lim	:	
Application No.: 10/580,050	:	
PCT No.: PCT/US2004/039333	:	DECISION ON
Int. Filing Date: 19 November 2004	:	
Priority Date: 19 November 2003	:	PETITION
Attorney Docket No.: PP021454.0004	:	
For: METHODS AND REAGENTS FOR TREATING, PREVENTING AND DIAGNOSING BUNYAVIRUS INFECTION	:	UNDER 37 CFR 1.181

This decision is in response to applicant's Petition Under 37 CFR 1.182 to vacate the Notification of Defective Response, filed in the United States Patent and Trademark Office on 03 February 2011. It is being treated as a petition under 37 CFR 1.181. The petition fee will be refunded.

BACKGROUND

On 19 May 2006, applicants filed a transmittal letter to the United States Designated/Elected Office. On it, applicants indicated there were 20 independent claims, with 17 over 3. Applicants authorized the Office to charge any deficiency. Office calculations found 21 independent claims, with 18 over 3.

On 28 July 2009, the Office mailed Decision On Petition vacating a holding of abandonment and indicating that a sequence listing in compliance with regulations had been submitted and entered.

On 03 February 2011, the Office mailed Notification of Defective Response (Form PCT/DO/EO/916) indicating that a sequence listing and $220 in claim fees were required.

On 09 March 2011, applicants filed this petition to vacate the Notification of Defective Response.

On 14 March 2011, the Office mailed Notification of Acceptance (Form PCT/DO/EO/903) indicating that the application had satisfied the requirements under 35 USC 371(c)(1), (c)(2) and (c)(4) and all on 35 USC 371 on 10 August 2007.

DISCUSSION

The Notification of Defective Response, mailed 03 February 2011, issued in error and is hereby vacated. The Office is in receipt of applicants' response to the notice to comply with the sequence listing requirements and the CRF was entered. Further, applicants authorized the Office to charge any required fees with the 19 May 2006 authorization. The claim fee will be corrected to reflect the applicable fee at filing. The surplus will be returned to deposit account no. 03-1664, as authorized.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The Notification of Defective Response (Form PCT/DO/EO/916) mailed 03 February 2011 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of Patent Application Processing for further processing in accordance with this decision.

/Erin P. Thomson/

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

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

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MAILED

JUN 21 2011

PCT LEGAL ADMINISTRATION

Peter K. Trzyna
PO Box 7131
Chicago IL 60680-7131

In re Application of GRAFF	:	
Application No.: 10/580,083	:	DECISION ON PETITION
Filing Date: 18 May 2006	:	
Attorney Docket No.: Graff-PCT-04	:	UNDER 37 CFR 1.78(a)(3)
For: COMPUTER CONTROL OF NON-	:	
DEBT FUNDING SYSTEM FOR HOME DEVICE	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed 14 October 2010 to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the international application identified in the concurrently filed amendment to the specification.

At the time of filing the present application, applicant did not make a proper claim for domestic priority. Thus, the filing of a petition under 37 CFR 1.78(a)(3) is necessary. Such petition is hereby **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.

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

Copied from 11580083 on 07/26/2011

U.S.C. §§ 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this instant 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 this application is entitled to the benefit of the earlier filing date.

Any inquiries concerning this decision may be directed to Cynthia M. Kratz at (571) 272-3286. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 3688 for appropriate action, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. 120 to the prior-filed nonprovisional application.

/Bryan Lin/
Bryan Lin
Legal Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

Copied from 11580083 on 07/26/2011

A

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 3/17/2011

TO SPE OF : ART UNIT 1732

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/580097 Patent No.: 7851402 B2

CofC mailroom date: 3/10/2011

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 Tilbert
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: _____

SPE

1732
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED
JUN 09 2011
OFFICE OF PETITIONS

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

In re Patent No. 7,828,890	:	
Issue Date: November 9, 2010	:	
Application No. 10/580,120	:	DECISION ON PETITION
Filed: September 11, 2006	:	
Attorney Docket No. P/746-4	:	

This is a decision on the Request For Certificate Of Correction, filed February 2, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to correct assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), has been submitted. However, the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), is required. Therefore, since the petition was accompanied deposit account authorization, the fee has been charged. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

However, petitioner requests a correction to be made in Item (54). Therefore, the correction will be handled directly in the Certificate of Correction Branch.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,828,890.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:02162011

DATE : February 16, 2011

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 7,435,828

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:

The change to Example 86 in Column 77, lines 40-45, would introduce new matter. The R variable substituent printed in the patent for Example 86 has the exact stereochemistry as found in the originally filed specification on page 70, last line of page.

Entire Column 97 and Column 98, lines 1-39, should not be deleted. Certificate of Correction is not proper for this type of change to the patent.

/Joseph K. McKane/
Supervisory Patent Examiner, Art Unit 1626

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,169	12/01/2006	Christoph Binkert	AC-44-US	3809

50446 7590 02/23/2011
HOXIE & ASSOCIATES LLC
75 MAIN STREET , SUITE 301
MILLBURN, NJ 07041

EXAMINER
STOCKTON, LAURA LYNNE

ART UNIT	PAPER NUMBER
1626	

MAIL DATE	DELIVERY MODE
02/23/2011	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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:02162011

DATE : February 16, 2011

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 7,435,828

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:

The change to Example 86 in Column 77, lines 40-45, would introduce new matter. The R variable substituent printed in the patent for Example 86 has the exact stereochemistry as found in the originally filed specification on page 70, last line of page.

Entire Column 97 and Column 98, lines 1-39, should not be deleted. Certificate of Correction is not proper for this type of change to the patent.

/Joseph K. McKane/
Supervisory Patent Examiner, Art Unit 1626

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:040611

DATE : April 06, 2011

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 7,435,828

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:

Upon reconsideration and the support identified by Applicant on page 20, lines 7-10 of the instant specification in the Request for Reconsideration filed March 25, 2011, the change to Example 86 in Column 77, lines 40-45, is approved.

However, the entire Column 97 and Column 98, lines 1-39, should not be deleted. Certificate of Correction is not proper for this type of change to the patent nor is Certificate of Correction proper for the change of benefit claim from a "371" to a "CIP of PCT/EP04/12953" as suggested by Applicant in the Request for Reconsideration filed March 25, 2011 on page 3 of 4, second paragraph.

/Joseph K. McKane/
Supervisory Patent Examiner, Art Unit 1626

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FEB 10 2012
OFFICE OF PETITIONS

WENDEROTH, LIND & PONACK L.L.P.
1030 15TH STREET, N.W.
SUITE 400 EAST
WASHINGTON, DC 20005-1503

In re Application of
Kaoru Yokota, et al.
Application No. 10/580,178
Filed: May 22, 2006
Attorney Docket No.: 2006_0680A

ON PETITION

This is a decision on the petition, filed December 28, 2011, 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 respond in a timely manner to the Notice of Allowability mailed September 2, 2011. A Notice of Abandonment was mailed on December 20, 2011. On December 28, 2011, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected drawings; (2) the petition fee of $1,860 and (3) an adequate statement of unintentional delay[1].

The application is being referred to the Office of Data Management to oversee the review of the drawing filed on December 28, 2011.

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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

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MAILED
SEP 20 2011
OFFICE OF PETITIONS

Novak Druce& Quigg LLP
300 New Jersey Avenue
Fifth Floor
Washington DC 20001

Application No. 10/580,191
Filed: May 23, 2006
Title: JOINT FOR A PANEL

: DECISION UPON REQUEST
: RECONSIDERATION OF DECISION
: DISMISSING PRE-APPEAL BRIEF
: REQUEST

FACTS

1. Appellant filed a Notice of Appeal on January 6, 2011.
2. Appellant filed an amendment on January 6, 2011.
3. The Office mailed a Notice of Non-Compliant Pre-Appeal Brief Request for Review on January 26, 2011.
4. Appellant filed a Petition under 37 CFR 1.181 seeking supervisory review of Notice of Non-Compliant Pre-Appeal Brief Request for Review on March 4, 2011.
5. Appellant filed an Appeal Brief on July 6, 2011

OPINION

Applicant's Petition for Supervisory Review pursuant to 37 CFR 1.181 is dismissed for the following grounds:

1. The appellant's Request also included an amendment filed on the same date. As noted in the Notice, no after-final amendment may accompany the request. See New Pre-Appeal Brief Conference Pilot Program, 1296 Off. Gaz. Pat. Office 67 (July 12, 2005).

2. The appellant's Request exceeded the five page limit. Id.

3. The filing of an appeal brief ends the Request. Id.

4. The decision on pre-appeal brief is not petitionable because a decision to maintain rejections is subject to appeal and an applicant dissatisfied with the results of conference decision must pursue the appeal before the Board of Patent Appeals and Interferences. Id.

Any questions concerning this decision should be directed to 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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NOVAK, DRUCE + QUIGG, LLP – PERGO
300 NEW JERSEY AVE, NW
FIFTH FLOOR
WASHINGTON, DC 20001

MAILED

AUG 10 2010

OFFICE OF PETITIONS

In re Application of
Krister Hansson, et al.
Application No. 10/580,219
Filed: June 28, 2006
Attorney Docket No. TPP 32005

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 13, 2010, 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 May 20, 2009, 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 September 21, 2009. See MPEP 1215.04.

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

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1791 for appropriate action by the Examiner in the normal course of business on the reply received July 13, 2010.

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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Patent No. : 7973102
Application No.: 10/580336
Inventor(s) : Shun TAKAHASHI, Motoki TAKATA
Issued : 07/05/2011
Attorney Docket No.: ITO-105-PCT

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. A copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: 571-273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Tasneem Siddiqui
For Mary Diggs (Supervisor)
Decisions & Certificates of Correction Branch
(703) 756-1593 or (703) 756-1814
Date: 07/26/2011

Address: Martin A. Weeks
IPUSA, P.L.L.C.
1054 31st Street, N.W., Suite 400
Washington, DC 20007

ts

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Alexandria, VA 22313-1450
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MAR 07 2012
OFFICE OF PETITIONS

IPUSA, P.L.L.C
1054 31ST STREET, N.W.
Suite 400
Washington DC 20007

In re Patent No. 7,973,102	:	
Issue Date: July 5, 2011	:	
Application No. 10/580,336	:	DECISION ON PETITION
Filed: May 24, 2006	:	
Attorney Docket No. ITO-105-PCT	:	

This is a decision on the Request To Correct Assignee Under 37 CFR 3.81(b), filed August 11, 2011, to add the omission of the second assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present petition was submitted to add the omission of the second assignee's name on the previously submitted PTOL-85B and such error was inadvertent. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to add the omitted second assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with the petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,973,102.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/25/2011

TO SPE OF : ART UNIT 1765 James Siedleck (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/580357 Patent No.: 7574959

CofC mailroom date: 3/16/2011

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

[signature]
Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

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

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

Comments: _____

[signature] SPE

1765 Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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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PORTER WRIGHT MORRIS & ARTHUR, LLP
INTELLECTUAL PROPERTY GROUP
41 SOUTH HIGH STREET
28TH FLOOR
COLUMBUS, OH 43215

MAILED
OCT 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Gunnar Westin, et al.	:	
Application No. 10/580,487	:	ON PETITION
Filed: June 7, 2007	:	
Attorney Docket No.: 4007655-173902	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 23, 2010, 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 January 6, 2010, 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 April 7, 2010. A Notice of Abandonment was subsequently mailed on September 15, 2010.

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.

This application is being referred to Technology Center AU 1634 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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ROBINSON INTELLECTUAL PROPERT LAW OFFICE, PLLC
3975 FAIR RIDGE DRIVE
SUITE 20 NORTH
FAIRFAX, VA 22033

MAILED

MAR 07 2011

OFFICE OF PETITIONS

In re Application of	:	
Daisuke Kumaki, et al.	:	
Application No. 10/580,535	:	DECISION GRANTING PETITION
Filed: May 25, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 0756-7707	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 3, 2011, 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 9, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2811 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
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.*

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 08 2010
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JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE, L.L.P.
5TH FLOOR, FOUR UNITED PLAZA
8555 UNITED PLAZA BOULEVARD
BATON ROUGE LA 70809

In re Patent No. 7,717,383	:	
Issue Date: May 18, 2010	:	
Application No. 10/580,612	:	DECISION ON PETITION
Filed: March 27, 2007	:	
Attorney Docket No. 22630/112029-04	:	

This is a decision on the Request Under 37 CFR 3.81(b) To Correct Assignment Data, filed September 23, 2010, which is being treated as a Petition Under 37 CFR §3.81(b), to accept the omission of the assignee's name and residence. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to add the omission of the assignee's name and residence on the previously submitted PTOL-85B. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to add the omitted assignee's name and residence to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), has been submitted. However, the $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), was not charged. A review of the application record confirms that a general authorization to charge a deposit account was present. As such, the fee has been charged as authorized. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form that accompanied the petition.

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,717,383.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
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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ALEXEI DOLGOFF
P.O. BOX 292
GLEN ELLEN CA 95442

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of
ALEXEI DOLGOFF
Application No. 10/580,634
Filed: 07/02/2007
Title: ENVIRONMENTAL CONTROL SYSTEM AND METHOD

DECISION ON PETITION

This is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed April 22, 2010, and the petition under 37 CFR 1.183 filed June 1, 2010.

On August 5, 2009, the Office mailed a non-final Office action, which set a two-month period to reply to avoid abandonment. Extensions of the period for response were available under 37 CFR 1.136(a). Accordingly, petitioner was required to submit a reply on or before November 5, 2009 (or on or before February 5, 2010, with an appropriate request for extension of time for response and fee).

Petitioner filed a response to the non-final Office action with a certificate of mailing dated February 5, 2010. However, petitioner did not submit a request for an extension of time for response within the third month accompanied by the required extension of time fee until February 23, 2010. Although petitioner filed a reply to the non-final Office action, it was untimely the request for an extension of time for response and the extension of time fee was not paid until after the maximum statutory period for reply. Accordingly, the application became abandoned by statute on November 6, 2009. The Office mailed a Notice of Abandonment on February 23, 2010.

While the Office attempts to notify an applicant of any deficiency in the reply in a manner permitting a timely correction, the Office is under no obligation to do such. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) (while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction). An applicant is ultimately responsible for ensuring that a properly and timely reply is filed.

On petition, petitioner asserts that he did not receive the non-final Office action mailed August 5, 2009. Although petitioner submitted a change of address with USPS, the Office records reveal that petitioner did not file a request for a change of correspondence address with the USPTO until April 22, 2010. The Office notes that a belated notification to the USPTO of a change of correspondence address does not constitute proper notification. An applicant is responsible for promptly informing the USPTO of any change of address. Therefore, the showing of record is that petitioner did not submit a reply within the three-month shortened statutory period set forth in the non-final Office action in order to avoid abandonment of the application. Accordingly, the application was properly held abandoned by law.

Next, it appears that petitioner is requesting that the Office waive the rules and accept the reply as timely filed due to extraordinary circumstances. However, as the Office previously indicated, the period for reply is set by statute and compliance with the statute cannot be waived. Moreover, when an amendment is filed after the expiration of the statutory period, the application is abandoned and the remedy is to petition to revive it. Thus, petitioner has a suitable remedy on hand for his predicament that does not require the extraordinary remedy of invoking 37 CFR 1.183. Further, the USPTO will not normally consider an extraordinary remedy when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664 (Comm'r Pat. 1982).

In view of the above, the petitions under 37 CFR 1.181 and 1.183 are **dismissed**. Any request for reconsideration must be submitted within two (2) months of the date of this decision. This time period may not be extended. See 37 CFR 1.181(f).

Petitioner may wish to consider filing a petition under 37 CFR 1.137(b) to revive the application. A copy of the appropriate form accompanies this decision. The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application pursuant to 37 CFR 1.137(b). 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 $810.00); and,

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The Office reminds petitioner that a request for an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment pursuant to 37 CFR 1.136. In this instance, petitioner submitted the $555.00 extension of time fee on April 23, 2010, beyond the maximum period to respond. As the submission of the extension of time fee was untimely, petitioner may request a refund of the $555.00 fee in writing. In the alternative, petitioner may request that the $555.00 extension of time fee be applied towards the $810.00 petition fee and pay the balance of $255.00.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure (1)

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXEI DOLGOFF
P.O. BOX 292
GLEN ELLEN CA 95442

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application of :
ALEXEI DOLGOFF :
Application No. 10/580,634 :
Filed: 07/02/2007 :
Title: ENVIRONMENTAL CONTROL :
SYSTEM AND METHOD :

ON PETITION

This is in response to the petition under 37 CFR 1.137(b), filed October 15, 2010, to revive the above-identified application.

On August 5, 2009, the Office mailed a non-final Office action, which set a two-month period to reply to avoid abandonment. Extensions of the period for response were available under 37 CFR 1.136(a). Accordingly, petitioner was required to submit a reply on or before November 5, 2009 (or on or before February 5, 2010, with an appropriate request for extension of time for response and fee).

Petitioner filed a response to the non-final Office action with a certificate of mailing dated February 5, 2010. However, petitioner did not submit a request for an extension of time for response within the third month accompanied by the required extension of time fee until February 23, 2010. Although petitioner filed a reply to the non-final Office action, it was untimely the request for an extension of time for response and the extension of time fee was not paid until after the maximum statutory period for reply. Accordingly, the application became abandoned by statute on November 6, 2009. The Office mailed a Notice of Abandonment on February 23, 2010.

On October 15, 2010, petitioner submitted the present petition and a $555.00 petition fee. The Office notes that the current fee for filing a petition under 37 CFR 1.137(b) is $810.00 (leaving a balance due of $255.00).

The Office reminds petitioner that a grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

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

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

(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(b) was unintentional.

The present petition lacks item (1), the total amount due for the petition fee.

The Office notes:

> 35 U.S.C. 41(a)(7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.
>
> In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) **will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.**

MPEP 711.03(c)(III)(B) (emphasis added).

Accordingly, the Office lacks the discretion to, and will not, address the merits of any petition seeking revival of an abandoned application in the absence of the full payment of the petition fee required by statute. Thus, the petition is dismissed. This application is properly considered abandoned by operation of 35 USC 133 for failure to prosecute. The instant petition under 37 CFR 1.137(b) will not be decided on its merits. In order to revive this application, petitioner must submit a "renewed" petition under 37 CFR 1.137(b), accompanied by the balance of the petition fee in the amount of $255.00.

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

Correspondence may also be submitted electronically via EFS-Web.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED

MAY 02 2011

OFFICE OF PETITIONS

ALEXEI DOLGOFF
P.O. BOX 292
GLEN ELLEN CA 95442

In re Application of	:	
Alexei DOLGOFF	:	ON PETITION
Application No. 10/580,634	:	
Filed: July 2, 2007	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed March 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

On August 5, 2009, the Office mailed a non-final Office action, which set a three-month period to reply to avoid abandonment. Extensions of the period for response were available under 37 CFR 1.136(a). Accordingly, petitioner was required to submit a reply on or before November 5, 2009 (or on or before February 5, 2010, with an appropriate request for extension of time for response and fee).

Petitioner filed a response to the non-final Office action with a certificate of mailing dated February 5, 2010. However, petitioner did not submit a request for an extension of time for response within the third month accompanied by the required extension of time fee until February 23, 2010. Although petitioner filed a reply to the non-final Office action, it was untimely as the request for an extension of time for response and the extension of time fee were not filed until after the expiration of the maximum statutory period for reply. Accordingly, the application became abandoned by statute on November 6, 2009. The Office mailed a Notice of Abandonment on February 23, 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Response to the non-final Office action mailed August 5, 2009, (2) a petition fee of $810, and (3) a statement of unintentional delay. The reply to the non-final Office action is accepted as having been unintentionally delayed.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to Technology Center Art Unit 2156 for further action on the filed Response.

for Ramesh Krishnamurthy

David Bucci
Petitions Examiner
Office of Petitions

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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
ANDERSON, et al	:	
Application No. 10/580,636	:	DECISION ON PETITION
Filed: September 4, 2007	:	TO WITHDRAW
Attorney Docket No. 559022000300	:	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 14, 2011.

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

A review of the file record indicates that the power of attorney to Mika Mayer and the attorneys of record associated with Customer No. 25226, has been revoked by the assignee of the patent application on February 8, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: CATHRX LTD
5 PARKVIEW DRIVE
HOMEBUSH BAY NSW 2127 AU

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED
APR 04 2011
OFFICE OF PETITIONS

In re Application of	:	
Perillo et al.	:	
Application No. 10/580,651	:	DECISION ON PETITION
Filed: November 29, 2006	:	
Attorney Docket No. 4705-0120PUS1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 9, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed, August 31, 2010, 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 timely obtained. Accordingly, the application became abandoned on March 4, 2011.

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 (previously paid February 28, 2011) and the submission required by 37 CFR 1.114, (2) the petition fee of $1.620.00, 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 the undersigned at (571) 272-7751.

This matter is being referred to Technology Center AU 1629 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Mark J. Nuell
Birch, Stewart, Kolasch & Birch, LLP
12770 High Bluff Drive, Suite 260
San Diego, California 92130

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FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
AUG 2 0 2010
OFFICE OF PETITIONS

In re Application of	:	
Damian Fiolka, et al.	:	
Application No. 10/580,698	:	DECISION GRANTING PETITION
Filed: November 29, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 20228-013US1 HF 06 179	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 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 July 23, 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 Terri Johnson at (571) 272-2991.

This application 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.

Terri Johnson
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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MINNEAPOLIS MN 55440-1022

MAILED

OCT 2 6 2010

OFFICE OF PETITIONS

In re Application of	:	
Damian Fiolka, et al.	:	
Application No. 10/580,698	:	DECISION GRANTING PETITION
Filed: November 29, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 20228-013US1 HF 06 179	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, October 26, 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 October 1, 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 Terri Johnson at (571) 272-2991.

This application 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.

/Terri Johnson/
Terri Johnson
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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MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of :
Damian Fiolka et al :
Application No. 10/580,698 : ON PETITION
Filed: November 29, 2006 :
Attorney Docket No. POLARIZATION-MODULATING OPTICAL ELEMENT

This is a decision on the petition, filed February 11, 2011 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 18, 2011 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/
Irvin Dingle
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MINNEAPOLIS MN 55440-1022

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FEB 02 2012
OFFICE OF PETITIONS

In re Application of	:	
Damian Fiolka, et al.	:	
Application No. 10/580,698	:	DECISION GRANTING PETITION
Filed: November 29, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 20228-013US1 HF 06 179	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 31, 2012, 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 12, 2012 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 Terri Johnson at (571) 272-2991.

This application 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.

/Terri Johnson/
Terri Johnson
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.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120312

DATE : March 12, 2012

TO SPE OF : ART UNIT 1657

SUBJECT : Request for Certificate of Correction on Patent No.: 8080419

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:

/JON P WEBER/
Supervisory Patent Examiner.Art Unit 1657

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RESEARCH TRIANGLE PARK NC 27709-3398

MAILED
JUN 06 2011
OFFICE OF PETITIONS

In re Patent No. 7,807,800	: DECISION ON
Kendrew, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/580,781	: of PATENT TERM ADJUSTMENT
Issue Date: October 5, 2010	: and
Filed: June 13, 2007	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. LB63530US	: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM UNDER 35 USC §154(b) and 37 CFR §1.705(d)", filed December 3, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED.**

On October 5, 2010, the instant application matured into U.S. Patent No. 7,807,800 with a patent term adjustment of two hundred eighty-seven (287) days. The Office determined a patent term adjustment of 287 days based upon 25 days of Office delay pursuant to 37 CFR 1.703(a)(3) and 348 days pursuant to 37 CFR 1.703(b), reduced by 61 days of Applicant delay pursuant to 37 CFR 1.704(b).

Patentees are correct that the proper amount of days over 36 months from the filing date of the application until the issue date was not included in the "B" delay period. Commencement began on May 28, 2006 (i.e. 30 months from the priority date of November 28, 2003). Accordingly, the over three year period began on May 29, 2009 and ended on October 5, 2010 (the patent issue date), and is 495 days. See 35 U.S.C. 154(b)(1)(B)(i). Therefore, the "B" delay period is 495 days, not 348 days as originally calculated.

In view thereof, the correct number of days of patent term adjustment is **four hundred thirty-four (434)** days (25 days of "A" delay and 495 days of "B" delay, reduced by 61 days of Applicant delay and 25 days of overlap between "A" and "B" delay).

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred thirty-four (434) days.**

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,807,800 B2

DATED : **October 5, 2010**

INVENTOR(S) : Kendrew 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 287 days.

Delete the phrase "by 287 days" and insert – by 434 days--

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MAILED
SEP 23 2010
OFFICE OF PETITIONS

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

In re Patent No. 7,677,329	:	
Issue Date: March 16, 2010	:	
Application No. 10/580,825	:	NOTICE
Filed: May 26, 2006	:	
Attorney Docket No. 016862-0149	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed July 29, 2010. 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.

/Kimberly Inabinet/

Kimberly Inabinet
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

ALCON RESEARCH
TERESA J. SCHULTZ
6201 SOUTH FREEWAY
Q-148
FORT WORTH TX 76134-2099

MAILED
OCT 22 2010
OFFICE OF PETITIONS

In re Application of	:	
John C. LANG	:	
Application No. 10/580,940	:	DECISION ON PETITION
Filed: May 30, 2006	:	
Attorney Docket No. 2668-US F	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 1, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before September 27, 2010. As required by the Notice of Allowance and Fee(s) Due, mailed June 25, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the Issue Fee of $1510 and Publication Fee of $300; (2) the petition fee of $1620; and (3) and the required statement of unintentional delay.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted.

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

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

/DCG/
Diane C. Goodwyn
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

ALCON RESEARCH
TERESA J. SCHULTZ
6201 SOUTH FREEWAY
Q-148
FORT WORTH TX 76134-2099

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of	:	
John C. LANG	:	**CORRECTED**
Application No. 10/580,940	:	DECISION ON PETITION
Filed: May 30, 2006	:	
Attorney Docket No. 2668-US F	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 1, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before September 27, 2010. As required by the Notice of Allowance and Fee(s) Due, mailed June 25, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the Issue Fee of $1510 and Publication Fee of $300; (2) the petition fee of $1620; and (3) and the required statement of unintentional delay.

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

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

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/11/2011

TO SPE OF : ART UNIT 1621 Sullivan Daniel (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/581000 Patent No.: 7692012

CofC mailroom date: 2/25/2011

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

Certificates of Correction Branch
703-756-1571 _____

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: _____

/Susanna Moore/
Acting SPE
SPE

1621
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON DC 20005

MAILED
JAN 03 2012
OFFICE OF PETITIONS

In re Application of	:	
Mutsumi Abe	:	
Application No. 10/581,054	:	DECISION GRANTING PETITION
Filed: May 30, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 10178/48	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, December 27, 2011 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 15, 2011 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 Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2195 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
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.*

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

SYNGENTA CROP PROTECTION, INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of
Jerome Cassayre, et al.
Application No. 10/581,176
Filed: January 29, 2007
Attorney Docket No. 10314/UST

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 December 3, 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 November 2, 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]

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Mark D. Jenkins appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Jenkins desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

---

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

This application is being referred to Technology Center AU 1625 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: MARK D. JENKINS
WOMBLE, CARLYE, SANDRIDGE, & RICE, PLLC
PO BOX 7037
ATLANTA, GA 30357-0037

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

Decision Date : May 6,2011

In re Application of :

Jerome Cassayre

Application No : 10581176

Filed : 29-Jan-2007

Attorney Docket No : 70314/UST

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed May 6,2011 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic 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 the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Patent Publication.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	10581176
Filing Date	29-Jan-2007
First Named Inventor	Jerome Cassayre
Art Unit	1625
Examiner Name	CHARANJIT AULAKH
Attorney Docket Number	70314/UST
Title	SPIROPIPERIDINE DERIVATIVES FOR CONTROLLING PESTS

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee are not due.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.
- [x] 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.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

- ( ) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- (●) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/WILLIAM A. TEOLI JR./
Name	William A. Teoli Jr.
Registration Number	33104

OPA
MAY 06 2011
PATENT & TRADEMARK OFFICE

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	10581176
Filing Date	29-Jan-2007
First Named Inventor	Jerome Cassayre
Art Unit	1625
Examiner Name	CHARANJIT AULAKH
Attorney Docket Number	70314/UST
Title	SPIROPIPERIDINE DERIVATIVES FOR CONTROLLING PESTS

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee are not due.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.

☒ 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.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

- ( ) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- (●) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/WILLIAM A. TEOLI JR./
Name	William A. Teoli Jr.
Registration Number	33104

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 4, 2010

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/4581178 Patent No.: 7414132

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 Building
2800 South Randolph Street
Arlington, VA 22206

Magdalene Talley

_____
Certificates of Correction Branch
(571)272-0XXX

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____ **SPE** _____ **Art Unit** 1624

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

EDWARDS ANGELL PALMER & DODGE LLP
JAMES E. ARMSTRONG, IV
P.O. BOX 55874
BOSTON MA 02205

MAILED
AUG 04 2011
OFFICE OF PETITIONS

In re Application of :
Takahisa Ozawa et al. :
Application No. 10/581,266 :
Filed: June 1, 2006 :
Attorney Docket No.: 80508(302721) :

This is a decision on the petition filed July 21, 2011 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed January 3, 2011. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested within the extendable time allowed, this application became abandoned April 3, 2012. The instant petition and this decision precede the mailing of the Notice of Abandonment.

The record reveals that a three month extension of time was filed with the instant petition, however, 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 $1110.00 extension of time fee submitted with the petition on July 21, 2011, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 04-1105.

---

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

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

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

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

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

This matter is being referred to Technology Center 3764 for appropriate action on the amendment filed July 21, 2011.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,294	06/01/2006	Sudhir Paul	D6812	3697

7590 10/28/2010
Benjamin A. Adler, PhD, J.D.
8011 Candle Ln.
Houston, TX 77071

EXAMINER
DUFFY, PATRICIA ANN

ART UNIT	PAPER NUMBER
1645	

MAIL DATE	DELIVERY MODE
10/28/2010	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OCT 2 8 2010

ALDER & ASSOCIATES
8011 Candle Lane
Houston, Texas 77071

In re Application of: Paul et al	:	
Serial No: 10/581,294	:	DECISION
Filed: June 1, 2006	:	ON
Attorney Docket No: D6812	:	PETITION
Title: Proteolytic and Covalent Antibodies	:	

This letter is in response to the Petition under 37 C.F.R. 1.144 filed on May 11, 2010.

BACKGROUND

This application was filed under 35 U.S.C. 371 and as such is subject to PCT unity of invention practice.

Applicant filed a claim set on June 1, 2006 which was subject to a restriction requirement on May 2, 2008.

In the restriction requirement of May 2, 2008, the examiner presented the following groups:

Groups 1-4. Claims 1, 6-33, 71-75 and 84-85, drawn to method of making catalytic antibodies using a covalently reactive transition state antigen (pCRA of formula 1) analog wherein component L in pCRA is in groups 1 amino acid residue, group a sugar residue, group 3 nucleotide residue and group 4fatty acid residue.

Groups 5-8. Claims 2-5, drawn to a covalently reactive transition state antigen (pCRA) analog wherein component L comprises amino acid residue in group 5 sugar residue sugar residue in group 6 so on.

Groups 9-12. Clais 34-37, 51-52, drawn to monoclonal antibodies using pCRA of groups 5-8.

Groups 13-16. Claims 38-50, 53-66, drawn to method of making antibodies of groups 9-12.

Groups 17-20. Claims 67-68, drawn to method of improving catalytic activity of antibody using vectors containing pCRA of groups 5-8.
Groups 21-24. Claims 69-70, drawn to method of passively immunizing a patient by administering a catalytic antibody of grops 5-8.
Groups 25-28. Claims 76-78, method of stimulating production of antibodies in an organism administering antigen comprising pCRA of groups 5-8.

The examiner stated: The inventions listed in Groups 1-32 do not relate to a single general inventive concept under PCT Rule 13.1, because, under PCT Rule 13.2, they lack the same or corresponding special feature linking groups 1-32, pCRA antigen, does not constitute a "special technical feature" as defined by PCT Rule 13.2 because it does not claim a feature which defines a contribution over the prior art as said antigen is taught by Taguchi et al. (Biorg Med. Chem, 2002, 12:3167-3170).

On October 1, 2008, applicants elected Group 1, claims 1, 6-33 and 71-75 and traversed both the requirement for election of claims and the requirement for election of a species for component "L" in the Group 1 claims. Applicants responded that the special feature linking Groups 1-32 is the conformational flexibility of the pCRA and pCRAW antigens. Applicants stated that this unifying special technical feature is essential for coordinated alignment of the electrophillic and noncovalent binding sites of the antibody (PP 0010).

On January 30, 2009, a non-final Office action was issued. The examiner maintained that claims 1-85 are not linked by a special technical feature because of the disclosure in Taguchi et al. The examiner rejected claims 1, 8-14, 16, 24 and 31 under 102(a) and withdrew claims 2-5, 34-70 and 76-85. The examiner made restriction Final.

On July 30, 2009, a response was filed. Applicants amended the claims to limit the antigenic determinant L1...Lx...Lm of the pCRA to peptide or protein and to clarify that L' is a side chain functional group of the amino acid Lx. Applicants urged that Taguchi et al is restricted to a small peptide antigen in which the electrophile is located at the C-terminus.

On October 28, 2009, a non-final Office action was mailed. Examiner maintained the 102(a) rejection over Taguchi et al.

On April 28, 2010, a response was filed. Applicants further amended the claims and urged that the pCRA of the instant amended independent claim I and the conformational flexibility resulting from the structural arrangement provide the unity feature of the claims.

On May 11, 2010, the present petition was filed requesting reconsider the restriction.

DISCUSSION

The prosecution history has been carefully reviewed.

Applicants urged that the inventive concept in the claims is the Y'-Y"-Y' component contains a flexible electrophile Y that forms a full or partial covalent bond with the nucleophile of the antibody as defined in Paragraph 0087 of the instant specification. The reaction is coordinated with non-covalent binding between the antibody and the antigene determinant. Applicants emphatically stated that the CRA in Taguchi et al is distinctly not identical to the pCRA/pCRAW in applicant's claims. Applicants pointed out that Taguchi et al is limited to a linear electrophillic epitope composed of contiguous amino acids an the electrophile I the CRA of Taguchi et al is not located at the functional group of an amino acid as in applicant's pCRA. Applicants provided more detailed arguments that had been provided in their response dated 4/28/10. All the arguments have been considered. Taguchi et al do not teach applicants' pCRA or pCRAW and, therefore, cannot teach applicants' special technical feature of the flexible Y"...Y'...Y electrophile.

DECISION

The petition is **GRANTED** for the reasons set forth above.

The application is being forwarded to examiner for further evaluation of Unity of Invention after mailing of this decision.

Should there be any questions about this decision, please contact Supervisory Patent examiner Cecilia Tsang, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0562 or by facsimile sent to the general Office facsimile number, 571-273-8300.

JMStone

Jacqueline Stone
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LUCAS & MERCANTI LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK NY 10016

MAILED
MAY 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Sudhir Paul	:	
Application No. 10/581,295	:	ON PETITION
Filed: June 1, 2006	:	
Attorney Docket No. 64229-2150	:	

This is in response to petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed May 9, 2011.

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

The above-identified application became abandoned for failure to timely file a proper response to the final Office action, mailed March 30, 2010, which set a shortened statutory period for reply of three months. Applicants filed an RCE on September 29, 2010. However, the RCE was not accompanied by a submission. Accordingly, the application became abandoned on October 1, 2010. The Office mailed a Notice of Abandonment on October 12, 2010.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and filed the required submission for the RCE in the form of an Amendment.

The application is being forwarded to Group Art Unit 1648 for consideration of the RCE, filed September 29, 2010 (and the Amendment filed May 9, 2011).

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DECHERT LLP
P.O. BOX 390460
MOUNTAIN VIEW CA 94039-0460

MAILED
DEC 22 2011
OFFICE OF PETITIONS

In re Patent No.: 7,943,776 :
Issue Date: May 17, 2011 :
Application No.: 10/581,305 :
Filed: October 12, 2006 :
Attorney Docket No.: 383299-336US (107322) :

DECISION ON PETITION
UNDER 37 CFR 3.81

This is a decision on the Request to Correct Assignee under 37 CFR § 3.81(b) and Request for Certificate of Correction of Applicant Mistake under 37 CFR § 1.323, filed December 2, 2011, requesting correction on the Title Page of the subject patent, via issuance of a Certificate of Correction under 37 CFR 1.323, to identify the correct name of the assignee. The Request has been treated as a petition under 37 CFR 3.81. A completed Certificate of Correction form (PTO/SB44) accompanied the petition.

The petition under 37 CFR 3.81 is **GRANTED**.

Petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of a Certificate of Correction, to correct typographical error in the name of the assignee identified thereon from "Astrazeneca AB, Sodertalje (SE)" to:

-- AstraZeneca AB, Sodertalje (SE)--.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The petition was accompanied deposit account authorization to charge required fees. The requisite $100.00 fee (Fee Code 1811), as set forth under in 37 CFR 1.20(a), was previously submitted. The requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been charged as authorized in the petition. A review of the PART B –FEES TRANSMITTAL, submitted with the Issue Fee on April 1, 2011, reveals that "ASTRAZENICA AB" was erroneously identified as the assignee in Item 3 of the Transmittal. Office assignment records, however, are consistent with the requested correction. Accordingly, as the petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a

Certificate of Correction in accordance with the content of the Certificate of Correction form filed with the present petition.

Inquiries related to this communication should be directed to Brian W. Brown at (571) 272-5338.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

The matter is being referred to the Certificate of Corrections Branch for processing of a Certificate of Correction in US Patent 7,943,776.

Brian W. Brown
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

MAILED

JUN 07 2011

PCT LEGAL ADMINISTRATION

PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO IL 60680

In re Application of CABALLERO et al. Application No.: 10/581,419 PCT No.: PCT/US2004/037000 Int. Filing Date: 04 November 2004 Priority Date: 04 November 2003 Attorney Docket No.: MCEA-P6-06 For: COMPUTER SYSTEM MANAGING AN INSURANCE RESERVE REQUIREMENT BY SEGMENTING RISK COMPONENTS IN A REINSURANCE TRANSACTION	DECISION ON PETITION UNDER 37 CFR 1.78

This is a decision on the petition under 37 CFR § 1.78, filed 27 October 2010, to accept an unintentionally delayed claim for the benefit of the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition under 37 CFR 1.78 is **DISMISSED AS MOOT**.

The petition fee has been credited to Deposit Account 500235.

The petition was accompanied by an amendment to the first sentence of the specification following the title and an Application Data Sheet (ADS). Both the amendment and the ADS are addressed below.

This is also a decision on the request for corrected Filing Receipt also filed on 27 October 2010. The request for corrected Filing Receipt is **Refused**.

Petition Under 37 CFR 1.78
As noted in MPEP 1893.03(c),

> . . . it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage.

Because the instant application is a national stage application submitted under 35 U.S.C. 371, a petition under 37 CFR 1.78 is unnecessary. Also, a reference to the prior-filed provisional applications was included in the first sentence of the specification following the title. Accordingly, the petition under 37 CFR 1.78 is unnecessary. Additionally, the Office noted the claim for priority of the prior-filed provisional applications in the declaration filed with the application, as shown by their inclusion on the filing receipt.

Amendment to First Page of Specification Filed 27 October 2010

The amendment to the first page of the specification filed 27 October 2010, aside from correcting the filing date of provisional application number 60/517,180, merely adds redundant information. However, as the amendment does not involve any issues under 37 CFR 1.78, entry will be determined by the examiner.

Application Data Sheet

The second two boxes labeled "Prior Application Status" under "Domestic Benefit/National Stage Information" on page 4 of the ADS are redundant and possibly confusing and should be deleted.

Also, the information under "Foreign Priority Information on page 5 of the ADS should be deleted.

Filing Receipt

A corrected Filing Receipt is not included as the original Filing Receipt was correct.

The information requested to be added in the "REQUEST FOR CORRECTED FILING RECEIPT" filed 27 October 2010 is redundant and would be confusing if added.

Conclusion

Any inquiries concerning this decision may be directed to Daniel Stemmer at (571)-272-3301. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

/Daniel Stemmer/	/Bryan Lin/
Daniel Stemmer PCT Legal Examiner Office of PCT Legal Administration	Bryan Lin PCT Legal Examiner Office of PCT Legal Administration

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 03-02-12
TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/581499 Patent No.: 7816365

CofC mailroom date: 12-22-10

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

Note: _____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

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

Comments: _____

1624

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 03-02-12
TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/581499 Patent No.: 7816365

CofC mailroom date: 12-22-10

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 reque ‹ed 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

Note: _____

_____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments:

JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

1624

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DATE: May 31, 2011
TO: Certificates of Correction Branch
FROM: Pinchus M. Laufer
Senior Legal Advisor, Office of Patent Legal Administration
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,918,050 as specified on the attached Certificate.

Pinchus M. Laufer
Senior Legal Advisor
Office of Patent Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,918,050
Patented: April 5, 2019

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 254, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Graeme William Sturgeon, Whitianga (NZ); David James Calder McCormick, Thames (NZ); John Russel Neusroski, Thames (NZ); David Wells, Rotorua (NZ); Luc Desbonnets, Auckland (NZ).

Pinchus M. Laufer
Senior Legal Advisor
Office of Patent Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,563	06/02/2006	Michael Gavin Proctor	71,049-012	6206

27305 7590 08/11/2010
HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak, MI 48067

EXAMINER
MOORE, MARGARET G

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
08/11/2010	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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AUG 1 1 2010

wk

Mailed :	:	
In re Application of	:	DECISION ON
Proctor et al.	:	PETITION
Serial No. 10/581,563	:	
Filed: June 2, 2006		
For: METHOD OF MAKING KAOLIN CONTAINING SILICONE RUBBER COMPOSITIONS		

This is a decision on Appellants' Petition under 37 CFR 1.182, 1.183 but is also being treated under 37 CFR 1.181. Appellants request entry of evidence submitted after the Examiner's Answer.

Appellants assert that the Examiner's Answer raised the issue that the factual statements of the Declarant set forth in the Declaration could not be reviewed without additional evidence that corroborated and supported these statements.

A review of the record shows that the Examiner initially addressed the Declaration submitted on April 27, 2009 in the non-final office action dated June 29, 2009. Applicants filed an Appeal Brief after this office action even though the Examiner's action was non-final, however, because the claims were twice rejected Applicants were entitled to file an appeal brief. Appellants' arguments in the Brief relied on the Declaration. The Examiner raised a number of issues with Applicants' declaration that were in response to the arguments.

Affidavits or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1). Appellants request does not fall under the permitted exceptions. A review of the record does not indicate a need for a suspension of the rules in extraordinary situations under 37 CFR 1.183. Applicant asserts that it would be inequitable to require Applicant to restart the prosecution process. The record indicates that it was Applicant that terminated the prosecution process with the filing of an Appeal Brief after a non-final action. Appellants request for a suspension of the rules is denied.

DECISION

The petition is **DENIED**.

/W. GARY JONES/
W. Gary Jones, Director
Technology Center 1700
Chemical and Materials Engineering

David M. LaPrairie
HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak MI 48067

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KING & SPALDING LLP
PO BOX 889
BELMONT CA 94002-0889

MAILED

JUN 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Prestwich, et al.	:	
Application No. 10/581,571	:	ON REQUEST FOR
Filed: July 13, 2007	:	RECONSIDERATION OF
Attorney Docket Number: 67934-8006.US00	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed March 22, 2011. Applicants believe that the PTA should be accorded an additional four hundred six (406) days. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent pursuant to 37 CFR 1.702(b).

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

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

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

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

In view thereof, the correct determination of PTA prior to issuance is **five hundred twenty-seven (527) days**.

The application is being forwarded to the Office of Data Management for issuance of the patent.

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

Anthony Knight
Director
Office of Petitions

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

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Barbara V Maurer
University of Medicine and Dentistry of New Jersey
Office of Patents and Licensing
335 George St, Suite 3200
New Brunswick, NJ 08901

MAILED
DEC 06 2011
PCT LEGAL ADMINISTRATION

In re Application of: HANAUSKE-ABEL et al.
U.S. Application No: 10 /581,658
PCT Application No.: PCT/US2004/040236
International Filing Date: 01 December 2004
Priority Date: 03 December 2003
Attorney's Docket No.: NJMS 03-36
For: METHOD OF PREVENTING SURVIVAL OF RETROVIRALLY INFECTED CELLS AND OF INHIBITING FORMATION OF INFECTIOUS RETROVIRUSES

DECISION ON PETITION UNDER 37 CFR 1.137(b)

This decision is in response to applicant's "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)" filed 02 September 2011.

BACKGROUND

01 December 2004, applicants filed international application PCT/US2004/040236, which claimed priority of earlier US provisional application filed 03 December 2003. The thirty-month period for paying the basic national fee in the United States expired on 03 June 2006.

On 01 June 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 14 February 2007, the DO/EO/US mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497(a) and (b), and a surcharge fee as set forth in 37 CFR 1.492(h) must be filed.

On 15 April 2007, the present application became abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 02 September 2011, applicant filed the present petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional; and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply by submitting a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee for filing oath or declaration after commencement of the national stage.

With regard to item (2), applicant has provided the required petition fee set forth in 37 CFR 1.17(m).

The above-identified application has been abandoned for an extended period of time. The USPTO is relying on petitioner's duty of candor and good faith and accepting applicant's statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 7 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure 62 Fed. Reg. at 53160 and 53718, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.8 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the United States Patent and Trademark Office.).

With regard to item (3), applicant has provided the proper statement under 37 CFR 1.137(b)(3).

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reason above, the petition under 37 CFR 1.137(b) is **GRANTED**.

The application has an International Filing Date under 35 U.S.C. 363 of 01 December 2004, and a date under 35 USC 371(c)(1), (c)(2), and (c)(4) of 02 September 2011.

The application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

Bryan Lin
Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration

Seungsook Ham
Office of PCT Legal Administration
United States Patent and Trademark Office
Telephone: (571) 272-6095
Facsimile: (571) 273-0459

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CRAIG HALLACHER
CONTINENTAL TEVES INC
ONE CONTINENTAL DRIVE
AUBURN HILLS MI 48326

MAILED

AUG 18 2011

OFFICE OF PETITIONS

In re Application of	:	
GALKOSWKI, et al	:	
Application No. 10/581,834	:	DECISION ON PETITION
Filed: May 16, 2007	:	
Docket No. AP 11086	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 15, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 29, 2010, 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 30, 2010. A Notice of Abandonment was mailed November 24, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) and the required 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 3661 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
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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HOLLAND & KNIGHT LLP
2099 PENNSYLVANIA AVE
SUITE 100
WASHINGTON DC 20006

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SEP 01 2011
OFFICE OF PETITIONS

In re Application of

Curutchet Ferreira, et al. :

Application No. 10/581,866

: DECISION ON PETITION

Filed: May 14, 2007

:

Attorney Docket No.

This is a decision on the petition under 37 CFR 1.137(b), filed August 19, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, February 19, 2010, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on May 20, 2011.

The amendment filed August 19, 2011, is noted.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being

mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

The application is being forwarded to Technology Center 1700, GAU 1781 for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Mark D. Marin
Norris McLaughlin & Marcus, PA
875 Third Avenue
8th Floor
New York, NY 10022

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/23/11

TO SPE OF : ART UNIT 2815

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/581940 Patent No.: 7704763

CofC mailroom date: 07/28/10

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

RoChaun Johnson
Certificates of Correction Branch
703-756-1580

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: Denied because there is no apparent explanation or reason why the changes should be entered.

/Jerome Jackson/

10/581940

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. BOX 1450
Alexandria, Va 22313- 1450
www.uspto.gov.

DATE: March 24, 2011
Patent No: 7704763
Applicant: Fujii et l.
Issued: April 27, 2010

Request for consideration of Certificate of Correction:

Consideration has been given for your request for the certificate of correction for the above-identified patent under the provisions of Rules 1.322/1.323.

Respecting the alleged errors on the title page under (56) are printed in accordance with the record. The Examiner states there are no apparent explanation or reason why the changes should be entered. Therefore, no correction(s) are in order here under United States Codes (U.S.C.) 254 Code of Federal Regulation (C.F.R.) 1.322/1.323.

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

RoChaun Johnson for
Mary Diggs, Supervisor
Decisions and Certificates of Correction
(571) 272-0470

GATES & COOPER LLP
ATTN: GEORGE GATES
6701 CENTER DRIVE WEST, SUITE 1050
LOS ANGELES, CA 90045

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,947	06/06/2006	Bertrand Leblond	BJS-3665-181	5513

23117 7590 11/08/2010
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER
BROOKS, CLINTON A

ART UNIT	PAPER NUMBER
1621	

MAIL DATE	DELIVERY MODE
11/08/2010	PAPER

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

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

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NOV 0 8 2010

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of :
Leblond et al. :
Serial No.: 10/581,947 :Decision on Petition
Filed: June 6, 2006 :
Attorney Docket No.: **BJS-3665-181** :

This letter is in response to the petition filed under 37 C.F.R. § 1.144 filed on August 6, 2010 to review the examiner's withdrawal of claims 34 and 35 from consideration.

BACKGROUND

On August 26, 2009, the examiner divided claim 22-41 into 14 Groups based upon variables of the Markush claim.

The inventions listed as Groups 1-14 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The common core lacks unity of invention because it is known in WO 2001/056358 with RN 1168807-04-2 which has the same core as instantly claimed with a different utility of a pesticide. Due to this, unity of invention is lacking. Applicants were also advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

On September 25, 2008, applicants filed a bona fide response and elected, with traverse, the subject matter of Group 13. A species was also elected.

On October 28, 2009, the examiner mailed to applicants a non-final Office action. The examiner addressed the traversal and made the requirements final. Claims 23, 26 and 31 were withdrawn as being directed to non-elected invention. Claims 22, 24-25, 27-30 and 32-41 were examined to the extent that they read on the elected species. The examiner also stated that the elected species was free of the prior art. The claims were also rejected under 35 USC 112, second paragraph, USC 112, first paragraph, 35 USC 102, and 35 USC 103.

On February 1, 2010, applicants submitted claim amendments and arguments traversing the rejections set forth in the non-final of October 28, 2009.

On May 7, 2010, the examiner mailed to applicants a final Office action. Claims 23-26, 28, 34 and 35 were withdrawn as being directed to non-elected invention. Claims 22, 27, 29-33 and 36-41 were rejected. The claims were rejected under USC 112, first paragraph and 35 USC 102.

On August 6, 2010, applicants submitted the petition currently under review.

DISCUSSION

The petition and file history have been carefully considered.

Applicants argue that "claims 34 and 35 were indicated in the previous Office Action dated October 28, 2009 as reading on the elected species and were examined. See page 2 of the Office Action dated October 28, 2009. Neither claims 34 nor 35 were amended in the Amendment of January 28, 2010 or the Supplemental Amendment of February 1,2010 - which were filed in response to the Office Action of October 28, 2009 - such that the Examiner's withdrawal of the claims from consideration, for the first time in the final Office Action of May 7, 2010, is not appropriate or justified. The Examiner comments on page 2 of the Office Action dated May 7, 2010, that "claims 23-26, 28, and 34-35 are withdrawn from consideration pursuant to Markush practice as not being anticipated by the art below." are unclear as a basis for withdrawing the claims from consideration. The Examiner appears to have withdrawn admitted novel claims from consideration because they are novel over the cited art. Moreover, as claims 36-41 and new claim 42 depend from claim 34, the status of these dependent claims is uncertain in view of the Examiner's withdrawal of claim 34 from consideration."

Applicants' argument has been carefully considered and is persuasive that the record is uncertain. The examiner has limited the scope of the claims under examination to the elected species and closely related species. This is problematic for three reasons.

First, the examiner has withdrawn from consideration claims 34-35 which encompass the elected species which is counter to MPEP 818, which states: "Applicant must make his or her own election; the examiner will not make the election for the applicant. 37 CFR 1.142, 37 CFR 1.143."

Second, it is unclear which closely related species has or have been examined. The Office action only addresses the merits of the elected species. There is no rejection or, conversely, indication of allowability for any closely related species. The "closely related species" are not identified.

Third, 35 USC 121 permits the Office to require an election of species for prosecution on the merits, to which the claims shall be restricted if no generic claim is finally held to be allowable. Maintaining a restriction requirement amongst species is only proper if it is predicated upon a rejection under 35 USC 101, 102, 103 or 112 1st paragraph. In this instance, because there are no outstanding rejections, the examiner should have followed practice set forth in MPEP 803.02 and

examined a second and/or subsequence species in order to determine the patentability of the Markush claim.

However, this was not done. In the non-final Office action mailed October 28, 2009, the examiner indicated that the elected species was free of the prior art. MPEP § 803.02 states in part:

> "...should the examiner determine that the elected species is allowable, the examination of the Markush-type claim will be extended. If prior art is then found that anticipates or renders obvious the Markush-type claim with respect to a *nonelected species*, the Markush-type claim shall be rejected and claims to the nonelected species held withdrawn from further consideration. The prior art search, however, will not be extended unnecessarily to cover all nonelected species."

DECISION

The petition is **GRANTED** for the reasons set forth above.

Should the examiner find prior art on a second or subsequence species, per MPEP 803.02, the election of species requirement would be maintained.

The Office action of May 7, 2010 is withdrawn as incomplete, because there is no rejection under 35 USC 101, 102, 103 or 112 over the elected species, nor is there any rejection under 35 USC 101, 102, 103 or 112 over a second or subsequent embodiment in Markush claim, nor are claims encompassing the elected invention indicated as in condition for allowance. Moreover, the methods of making and using the elected product have not been examined.

The application will be forwarded to the examiner for preparation of a supplemental non-final Office action consistent with this decision per guidance in MPEP 803.02 and 821.04(b).

Should there be any questions about this decision, please contact Quality Assurance Specialist Marianne Seidel, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George C. Elliott, for

Remy Yucel
Director, Technology Center 1600

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,000	06/07/2006	Shinichi Inoue	3273-0226PUS1	9234

2292 7590 01/31/2011
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
HEINCER, LIAM J

ART UNIT	PAPER NUMBER
1767	

NOTIFICATION DATE	DELIVERY MODE
01/31/2011	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):

mailroom@bskb.com

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wk

Mailed: 1/31/2011

In re application of	:	
Inoue et al .	:	DECISION ON
Serial No. 10/582,000	:	PETITION
Filed: June 07, 2006	:	
For: RUBBER-LIKE ARTICLES AND RUBBER-LIKE MATERIAL-CONTAINING ARTICLES		

This is a decision on a PETITION filed January 21, 2011 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 1700 for consideration.

DECISION

Petitioner requests that pages 1-15 of the document filed November 12, 2010 under the code "AF/D" be expunged.

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.

10/582,000

The images will be removed from the Official file.

/Yvonne Eyler/
Director, Technology Center 1700

Yvonne L. Eyler, Director
Technology Center 1700
Chemical and Materials Engineering

Marc S. Weiner
BIRCH STEWART KOLASCH & BIRCH
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600 13TH STREET, NW
WASHINGTON, DC 20005-3096

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MAR 25 2011

OFFICE OF PETITIONS

In re Application of	:	
Vicente Gonez Amor	:	DECISION ON PETITION
Application No. 10/582,005	:	TO WITHDRAW
Filed: February 2, 2007	:	FROM RECORD
Attorney Docket No. 076283.0011	:	

This is a decision on the Request to Withdraw as Attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 8, 2011.

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 will require the practitioner(s) to specify a reason and certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which 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 replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by G. Matthew McCloskey on behalf of all the practitioners of record associated with Customer Number 23630.

Customer Number 23630 has been withdrawn as attorney from record. Applicant is reminded that there is no attorney of record at this time.

There are no outstanding Office actions that require a reply from the applicant.

As no change of correspondence address was indicated on the request, the address will remain unchanged.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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04372
ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

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FEB 01 2012

PCT LEGAL ADMINISTRATION

In re Application of
ZOLLO, Massimo
U.S. Application No.: 10/582,115
PCT No.: PCT/IT2004/000689
Int. Filing Date: 10 December 2004
Priority Date: 11 December 2003
Docket No.: 026073-00006
For: USE OF ENZYMATIC INHIBITORS OF H-PRUNE FOR THE PREVENTION AND TREATMENT OF THE METASTASES OF TUMOURS OVEREXPRESSING H-PRUNE

DECISION ON PETITION UNDER 37 CFR 1.137(b)

Applicant's petition to revive under 37 CFR 1.137(b) filed on 14 December 2011 is hereby **GRANTED** as follows:

An acceptable CRF sequence listing was provided with the subject petition. The petition fee for a small entity has been paid. Applicant made the required statement pursuant to 37 CFR 1.137(b)(3). A terminal disclaimer is not required. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

This application is being forwarded to the United States Designated/Elected Office for further processing in accordance with this decision.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

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OFFICE OF PETITIONS

Continental Teves, Inc.
One Continental Drive
Auburn Hills, Michigan 48346-1581

In re Application of	:	
Ronald BAYER et al.	:	DECISION GRANTING PETITION
Application No. 10/582,260	:	UNDER 37 CFR 1.137(b)
Filed: 17 April 2007	:	
Atty. Docket No.: AP 10835	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 29 December 2010, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 8 September 2009 ("outstanding Office action"), which set a shortened statutory reply period of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 9 December 2009, with the notification mailed 29 March 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a response to the outstanding Office action, (2) a petition fee of $1620.00, and (3) a statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

The application file will be referred to Technology Center AU 3663 for further action on the filed Response.

David Bucci
Petitions Examiner
Office of Petitions

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P.O. BOX 320850
ALEXANDRIA VA 22320-4850

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of :
Yasufumi NISHII, et *al.* :
Application No. 10/582,268 : DECISION GRANTING PETITION
Filed: June 9, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **128375** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 28, 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 December 7, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2882 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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28 SEP 2010

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

In re Application of	:	DECISION ON
Hill et al	:	
Application No.: 10/582,321	:	
PCT No.: PCT/IB2004/04419	:	
Int. Filing Date: 10 December 2004	:	PETITION
Priority Date: 12 December 2003	:	
Attorney's Docket No.: 049280-0102	:	
For: METHOD OF... HEMOGLOBIN	:	UNDER 37 CFR 1.182

This decision is in response to the "PETITION UNDER 37 CRF 1.182 FOR... NATIONAL STAGE APPLICATION" filed on 28 July 2010, which is being treated as a petition under 37 CF 1.182 to accept entry of the above identified application into the national stage with the corrected PCT number of PCT/IB2004/04419. Petitioner has been charged the petition fee of $400.00 to the Deposit Account No.: 19-0741.

BACKGROUND

On 10 December 2004, this international application was filed, claiming an earliest priority date of 12 December 2003.

On 09 June 2006, applicants filed a transmittal letter for entry into the national stage in the United States. However, the incorrect PCT number (PCT/IB2004/004119) was submitted at the time of filing.

On 27 February 2007 and 21 May 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905).

22 May 2007, an executed declaration was filed.

On 24 July 2007, the USPTO mailed a "NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 C.F.R. 1.495 (Form PCT/DO/EO/903)," indicating that date of receipt of 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) requirements is 22 May 2007, and a date of completion of all 35 USC 371 requirements of 22 May 2007.

On 28 July 2010, petitioner filed a petition under 37 CRF 1.182 stating that at the time of filing the application, the correct number is **PCT/IB2004/004419**.

DISCUSSION

Petitioner states that the PCT number was incorrectly entered as PCT/IB2004/004119 rather than the correct number PCT/IB2004/004419 was indicated at the time of filing.

Although applicants entered the incorrect PCT serial number at the time of filing the application, the correct PCT/IB2004/004419 was placed on the specification and the correct copy of the published text of PCT/IB2004/004419 was submitted with the U.S. National Phase entry. Accordingly, there is sufficient evidence that the correct international application PCT number is PCT/IB2004/004419.

Therefore, petition to accept the correct PCT number of **PCT/IB2004/004419** for the instant application is granted, and will be reflected in a corrected filing receipt.

DECISION

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

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (571) 272-3276
Facsimile: (571) 273-0459

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/582,327	TSUKADA, MAMORU	
	Examiner	Art Unit	
	FRANK LU	1634	

ISSUE CLASSIFICATION

ORIGINAL						CROSS REFERENCE(S)							
CLASS				SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)							
536				24.3	536	23.1	24.33						
INTERNATIONAL CLASSIFICATION					435	6	6.11	91.1					
C	0	7	H	21/04									
C	0	7	H	21/02									
C	1	2	Q	1/68									
C	1	2	P	19/34									
				/									

(Assistant Examiner) (Date)		Total Claims Allowed: 1
(Legal Instruments Examiner) (Date)	/Frank W Lu/ 1/25/2012 (Primary Examiner) (Date)	O.G. Print Claim(s): 1 — O.G. Print Fig.: None

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
	1		31		61		91		121		151		181
1	2		32		62		92		122		152		182
	3		33		63		93		123		153		183
	4		34		64		94		124		154		184
	5		35		65		95		125		155		185
	6		36		66		96		126		156		186
	7		37		67		97		127		157		187
	8		38		68		98		128		158		188
	9		39		69		99		129		159		189
	10		40		70		100		130		160		190
	11		41		71		101		131		161		191
	12		42		72		102		132		162		192
	13		43		73		103		133		163		193
	14		44		74		104		134		164		194
	15		45		75		105		135		165		195
	16		46		76		106		136		166		196
	17		47		77		107		137		167		197
	18		48		78		108		138		168		198
	19		49		79		109		139		169		199
	20		50		80		110		140		170		200
	21		51		81		111		141		171		201
	22		52		82		112		142		172		202
	23		53		83		113		143		173		203
	24		54		84		114		144		174		204
	25		55		85		115		145		175		205
	26		56		86		116		146		176		206
	27		57		87		117		147		177		207
	28		58		88		118		148		178		208
	29		59		89		119		149		179		209
	30		60		90		120		150		180		210

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KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

MAILED
SEP 24 2010
OFFICE OF PETITIONS

In re Application of

Horsky, et al.

Application No. 10/582,392

Filed: June 28, 2007

Attorney Docket No. 211843-00044

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), filed September 3, 2010, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely remit the issue fee of $1510.00 and publication fee of $300.00 as required by the Notice of Allowance and Issue Fee Due (the "Notice") mailed June 2, 2010. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on September 3, 2010. A Notice of Abandonment was mailed on September 9, 2010.

The issue fee and publication fee were received on September 3, 2010.

Form PTOL-85B, filed September 3, 2010, is noted and made of record.

The application is being directed to the Office of Data Management for further processing.

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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CONTINENTAL TEVES, INC.
ONE CONTINENTAL DRIVE
AUBURN HILLLS MI 48326-1581

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Uli Joos et al.	:	
Application No. 10/582,455	:	DECISION ON PETITION
Filed: May 14, 2007	:	
Attorney Docket No. **TM027**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 15, 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 Office action under Ex parte Quayle, 1935 Dec. Comm'r Pat. 11 (1935), mailed January 30, 2009, which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 31, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of amendment , (2) the petition fee of $1,620, (3) a proper statement of unintentional delay. Accordingly, the failure to respond to the Office action under Ex parte Quayle, 1935 Dec. Comm'r Pat. 11 (1935), mailed January 30, 2009 is accepted as being unintentionally delayed.

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 be acknowledged as the attorney of record regarding this application, the appropriate power of attorney document must be submitted.

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 $1,110 extension of time fee submitted with the petition on December 15, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

This application is being referred to Technology Center AU 2831 for further processing in accordance with this decision on petition.

JoAnne Burke
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

MAILED
JAN 21 2011
OFFICE OF PETITIONS

Continental Teves, Inc.
One Continental Drive
Auburn Hills, Michigan 48326-1581

In re Application of	:	
Uli JOOS et al.	:	DECISION GRANTING PETITION
Application No. 10/582,460	:	UNDER 37 CFR 1.137(b)
Filed: 12 June 2006	:	
Atty. Docket No.: TM010	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 6 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 13 May 2008 ("outstanding Office action"), which set a shortened statutory reply period of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 14 August 2008, and notification was mailed 30 January 2009.

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

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Response to the outstanding Office action, (2) a petition fee of $1620.00, and (3) a Statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

There is no indication that the person signing the instant Petition was given a power of attorney or authorization of agent to prosecute the Application. Further, it is not apparent whether the signer of the Petition was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of the delay. *See,* 37 CFR 10.18(b) and Changes to Patent Practice and

Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (10 October 1997), 1203 Off. Gaz. Pat. Office 63, 103 (21 October 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.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

The application file will be referred to Technology Center Art Unit 2836 for further action on the filed Response.

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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CONTINENTAL TEVES, INC.
ONE CONTINENTAL DRIVE
AUBURN HILLS MI 48326-1581

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of	:	
JOOS, et al	:	
Application No. 10/582,462	:	DECISION ON PETITION
Filed: June 12, 2006	:	
Docket No. TM028	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 30, 2010, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 26, 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 September 27, 2008.

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

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted.

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

This application is being referred to Technology Center AU 2838 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
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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YOUNG & THOMPSON
209 MADISON STREET
SUITE 500
ALEXANDRIA, VA 22314

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Cantenot et al.	:	DECISION ON PETITION
Application No. 10/582,511	:	TO WITHDRAW
Filed: September 8, 2006	:	FROM RECORD
Attorney Docket No. 0600-1199	:	

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 11, 2011.

The request is **NOT APPROVED**.

The Office strongly encourages practitioner(s) requesting withdrawal from representation as practitioner of record in an application to review the record to determine whether he or she is, in fact, of record and how he or she was made of record. For example, the practitioner(s) should determine whether he or she was appointed by naming each practitioner individually or through the use of a Customer Number.

In the instant application, the practitioner(s) were appointed via Customer Number however the request does not designate a Customer Number to be withdrawn by. The request was signed by Liam McDowell on behalf of all the practitioners (with registration numbers) of record listed on the attached papers.

Further, the Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which 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 replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40(c).

The current request does not properly withdraw practitioners via Customer Number as it does not set forth all of the above certifications. Therefore, the request cannot be approved at this time. Any subsequent request must withdraw all associated practitioner(s) in the same manner as appointed and provide all of the above listed certifications pursuant to 37 CFR 10.40(c).

There are no outstanding Office actions that require a reply from the applicant.

All future communications from the Office will be directed to above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address have been submitted.

A. Kelley

Alicia Kelley
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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MAILED
DEC 20 2011
PCT LEGAL ADMINISTRATION

DLA PIPER LLP US
P. O. BOX 2758
RESTON, VA 20195

In re Application of
MORIYAMA et al.
U.S. App. No. 10/582,552
PCT No.: PCT/JP04/18393
Int. Filing Date: 09 December 2004
Priority Date: 09 December 2003
Attorney Docket: 359636-000003
For: CORELESS LINEAR MOTOR HAVING A NON - MAGNETIC REINFORCING MEMBER

DECISION ON PETITION

This decision is issued in response to the "Request For Corrected Official Filing Receipt and Notification of Acceptance (PCT/DE/EO/903)" filed 19 December 2011, treated herein as a petition under 37 CFR 1.181 to correct the 35 U.S.C. 371(c) date. No petition fee is required.

BACKGROUND

On 09 December 2004, applicants filed international application PCT/JP04/18393. The international application claimed a priority date of 09 December 2003. On 23 June 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submitting the basic national fee was 09 June 2006, i.e., thirty months from the priority date.

On 09 June 2006, applicants filed a Transmittal Letter requesting entry into the U.S. national stage accompanied by, among other materials, payment of the basic national fee and a translation into English of the international application.

On 25 June 2007, applicants filed an executed declaration in compliance with 37 CFR 1.497.

On 14 August 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Acceptance" (Form PCT/DO/EO/903) identifying the "Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) Requirements" and the "Date Of Completion Of All U.S.C. 371 Requirements" as 25 July 2007. Also on 14 August 2007, a filing receipt was issued that identified the 35 U.S.C. 371(c) date as 25 July 2007.

On 19 December 2011, applicants filed the "Request For Corrected Official Filing Receipt and Notification of Acceptance (PCT/DE/EO/903)" treated herein as a petition under 37 CFR 1.181. The petition includes a copy of the previously filed submission, as well as a copy of the Electronic Acknowledgement Receipt with a receipt date of 25 June 2007.

DISCUSSION

A review of the application file and the materials filed by applicants on 19 December 2011 confirm that the executed declaration completing the requirements of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) was filed herein on 25 June 2007. The Notification Of Acceptance and filing receipt mailed 14 August 2007, both of which identified the 35 U.S.C. 371(c) date as 25 July 2007, are therefore appropriately vacated.

CONCLUSION

The petition under 37 CFR 1.181 to correct the 35 U.S.C. 371(c) date is **GRANTED**.

This application's date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) has been corrected to 25 June 2007.

The Notification Of Acceptance and filing receipt mailed 14 August 2007, both of which identified the 35 U.S.C. 371(c) date as 25 July 2007, are hereby **VACATED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision, that is, for mailing of a NOTIFICATION OF ACCEPTANCE OF APPLICATION (Form PCT/DO/EO/903) and Official Filing Receipt which identifies a date of 25 June 2007 under 35 U.S.C. 371(c).

Anthony Smith
Attorney-Advisor
Office PCT Legal Administration
Tel.: 571-272-3298

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,654	02/20/2008	Koichiro Ono	6235-75996-01	6586

24197 7590 06/03/2011
KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET
SUITE 1600
PORTLAND, OR 97204

EXAMINER
BRISTOL, LYNN ANNE

ART UNIT	PAPER NUMBER
1643	

NOTIFICATION DATE	DELIVERY MODE
06/03/2011	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):

tanya.harding@klarquist.com
docketing@klarquist.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 0 3 2011

KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET
SUITE 1600
PORTLAND OR 97204

In re Application of:	:	
Ono et al.	:	
Serial No.: 10/582,654	:	PETITION DECISION
Filed: February 20, 2008	:	
Attorney Docket No.: **6235-75996-01**	:	

This is in response to the petition under 37 CFR § 1.59(b), filed January 14, 2011, to expunge information from the above identified application. This application has not been allowed.

Petitioner requests that the IDS filed on December 29, 2010 (including the cover form and the 1449 form) be expunged from the USPTO records for this application due to an error in a statement made in the IDS cover form. Applicants are concurrently herewith submitting a new IDS (which cites the same references submitted on December 29, 2010).

Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for these documents has been closed and as such the documents are no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HUSCH BLACKWELL, LLP
HUSCH BLACKWELL SANDER LLP WELSH & KATZ
120 S RIVERSIDE PLAZA, 22ND FLOOR
CHICAGO, IL 60606

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application of :
Daisuke KUMAKI, et *al.* :
Application No. 10/582,718 : DECISION GRANTING PETITION
Filed: June 12, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **0553-0505** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 8, 2011, 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 15, 2011 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 2814 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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,787	06/13/2006	Masato Kaneda	Q79148	5976

23373 7590 03/02/2012
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER
EOFF, ANCA

ART UNIT	PAPER NUMBER
1722	

NOTIFICATION DATE	DELIVERY MODE
03/02/2012	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):

USPTO@sughrue.com
sughrue@sughrue.com
PPROCESSING@SUGHRUE.COM

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

Mailed: 3/2/12

CHK
Paper No.

In re Application of KANEDA et al.
Serial No.: 10/582787
Filed: June 13, 2006
For: Photosensitive Composition Remover

DECISION ON PETITION
UNDER *37 CFR 1.48(a)*

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed July 7, 2010 to correct inventorship under 37 CFR 1.48(a) by adding the name of Kouichi Terao.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63 and (4) providing the processing fee set forth in 1.17(i). Applicant has provided (5) the written consent of the assignee as required.

The request is **GRANTED.**

/Cynthia H. Kelly/

Cynthia H. Kelly
Supervisory Patent Examiner
Technology Center 1700

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

MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,767,436 :
Issued: August 3, 2010 :
Application No. 10/582,887 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: June 18, 2007 :
Dkt. No.: MTS5003USPCT :

This is a decision on the petition filed September 21, 2010 requesting that the patent term adjustment of 628 days for the above-identified patent be increased to 636 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,767,436 on August 3, 2010. The patent issued with 628 days of patent term adjustment. The instant request under 37 CFR 1.705(d) is timely filed. Patentee argues that the adjustment pursuant to 37 CFR 1.703(a) is 317 days. Patentee further argues that the adjustment pursuant to 37 CFR 1.703(b) is 339 days. Patentee further asserts a 20 day overlap between the (a) and (b) adjustments.

The petition has been carefully considered, but is not persuasive.

The period of adjustment pursuant to 37 CFR 1.703(a)(1) is 297 days, not 317 days. The application did not meet the requirement of 35 USC 371(f). Thus, the period of adjustment pursuant to 37 CFR 1.703(a)(1) commenced August 19, 2008, the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371, and ended June 11, 2009, the date that the restriction requirement was mailed. See, 37 CFR 1.702(a)(1), 1.703(a)(2), and MPEP 1893.03(b).

The period of adjustment pursuant to 37 CFR 1.703(b) is 331 days. In an international application, the period of adjustment under 37 CFR 1.703(b) period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See, 1.702(b). The priority date of this application is December 22, 2003. The requirements for early commencement were not met; accordingly, the national stage commenced in this application on June 22, 2006. The period of adjustment pursuant to 37 CFR 1.703(b) commenced June 23, 2009 and ended May 19, 2010, the day before the date that the request for continued examination (RCE) was filed. 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. See, 35 U.S.C. 154(b)(1)(B)(i).

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Receipt is hereby acknowledged of the $200.00 fee required per 37 CFR 1.18(e).

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : August 5, 2011

TO SPE OF : ART UNIT 1636

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/582975 Patent No.: 7919319

CofC mailroom date: 7-28-11

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

Note: _____

Magdalene Talley
Certificates of Correction Branch
571-272-0423 _____

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: _____

Ardin H. Marschel 8/8/11
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER

SPE

1636
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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LANXESS CORPORATION
111 RIDC PARK WEST DRIVE
PITTSBURGH, PA 15275-1112

MAILED

NOV 0 8 2010

OFFICE OF PETITIONS

In re Application of	:	
Andreas Job, et al.	:	
Application No. 10/583,006	:	DECISION GRANTING PETITION
Filed: February 2, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. CH-8455/CHS03 1010	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 5, 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 October 14, 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 regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1626 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
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 : 10-28-11

TO SPE OF : ART UNIT 1786

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/583028 Patent No.: 7901791

CofC mailroom date: 10-11-11

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

Certificates of Correction Branch
Angela Green

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: All changes have been approved.

/Jennifer A. Chriss/, SPE — **SPE**

1786 — **Art Unit**

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.
10/583,077	06/15/2006	Robert Spindler	AT03 0072 US1	8828

65913 7590 02/11/2011
NXP, B.V.
NXP INTELLECTUAL PROPERTY & LICENSING
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE, CA 95131

EXAMINER
GARCIA, SANTIAGO

ART UNIT	PAPER NUMBER
2611	

NOTIFICATION DATE	DELIVERY MODE
02/11/2011	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):

ip.department.us@nxp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAIL

FEB 11 2011

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of:
SPINDLER et al
Application Serial No.: 10/583,077
Filed: June 15, 2006
For: **SYCHRONIZATION DURING ANTI-COLLISION**

DECISION
ON PETITION

This is a decision on the petition filed January 3, 2011 under 37 CFR § 1.181, requesting the Director to invoke his supervisory authority and withdraw the finality of the final Office action mailed November 3, 2010.

REGULATIONS AND PRACTICE

37 CFR § 1.113(a) states in part that:

> (a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's or patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191) or to amendment as specified in § 1.116. ...

MPEP § 706.07(a) states in part that:

> Under present practice, second or any subsequent action on the merits shall be final, except where the examiner introduces a new ground of rejection that is (not) necessitated by applicant's amendment of the claims...

MPEP 1207.03 III states in part that:

> There is no new ground of rejection when the basic thrust of the rejection remains the same such that an appellant has been given a fair opportunity to react to the rejection. See In re Kronig, 539 F.2d 1300, 1302-03, 190 USPQ 425, 426-27 (CCPA 1976).

OPINION

Petitioner contends "that the final Office Action dated November 3, 2010, contains new grounds of rejection" and "Specifically, the current Office Action presents, for the first time, assertions by the Examiner that the interrogation signal 20 of the '099 reference corresponds to the claimed confirm command and that the '099 reference also teaches a different integration signal including a short repeat message that corresponds to the claimed repeat command not containing synchronization information". Accordingly, "Applicant has not had an adequate opportunity to consider, address and/or rebut these assertions."

A review of the record finds that the grounds of rejection was not changed by the examiner from the non-final Office action mailed July 21, 2010 and the subsequent final rejection mailed November 3, 2010. Furthermore, the precise reasons for the rejections identified in the non-final rejection are identical to the reasons given in the final rejection. Accordingly, no new ground of rejection was presented in the final rejection mailed November 3, 2010. Applicant had an adequate opportunity to consider, address and/or rebut these assertions.

CONCLUSION

For the above stated reason, the petition to withdraw the finality of the Final Office action mailed January 3, 2011 is **DENIED**.

The Notice of Appeal was filed on February 3, 2011. 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).

Mark R. Powell

Mark Powell, Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
JUL 11 2011
OFFICE OF PETITIONS

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

In re Application of	:	
TOMITA, Akira	:	
Application No. 10/583,078	:	DECISION ON PETITION
Filed: May 14, 2007	:	
Attorney Docket No. **Q95333**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit corrected formal drawings on or before March 07, 2011, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed December 06, 2010. Accordingly, the date of abandonment of this application is March 08, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected formal drawings, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of Allowance of October 01, 2008 is accepted as having been unintentionally delayed.

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

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Pierce Atwood LLP
Suite 2250
100 Summer Street
Boston MA 02110

MAILED

MAR 07 2012

OFFICE OF PETITIONS

In re Application of Lugtenburg et al. Application No. 10/583,082 Filed: August 8, 2007 Attorney Docket No.: VALEA-2001US01 Title: METHOD OF PREPARING PORPHYRIN DERIVATIVES, PORPHYRIN DERIVATIVES, USES THEREOF AND PHARMACEUTICAL COMPOSITIONS	DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.137(B)

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed January 30, 2012, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to file a proper response to the Restriction Requirement, mailed January 5, 2011, which set a shortened statutory period to reply of one month. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 6, 2011. A notice of abandonment was mailed on July 21, 2011.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the

required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;

(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted the petition fee, an election of species, and the proper statement of unintentional delay.

As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the election of species that was received on January 30, 2012 can be processed in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[2] In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that the delay was intentional, Petitioner must notify the Office.

---

1 See Rule 1.137(d).
2 See 37 C.F.R. § 10.18(b); cf. Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[3] 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

3 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 02/27/12

TO SPE OF : ART UNIT 2622

SUBJECT : Request for Certificate of Correction for Appl. No.: 10583095 Patent No.: 7859586

CofC mailroom date: 02/22/12

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
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the PCT Filing date be changed and added**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

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

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

Comments: _____

Sinh Tran — 2622

SPE — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,098	06/16/2006	Ralf Boehnke	287953US8X PCT	1264

22850 7590 09/12/2011
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
ROBERTS, BRIAN S

ART UNIT	PAPER NUMBER
2466	

NOTIFICATION DATE	DELIVERY MODE
09/12/2011	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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SEP 06 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

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

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

In re Application of: BOEHNKE, Ralf et. al.
Application No.: **10/583,098**
Filed: June 16, 2006
Docket No.: 287953US8X
Title: HETEROGENEOUS WIRELESS DATA TRANSMISSION NETWORK

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed on **August 16, 2011** under 37 CFR § 1.181(a)(3) requesting that the Examiner consider all references listed on the PTO-1449 filed with the Information Disclosure Statements (IDS) on September 29, 2009.

The petition is **DISMISSED AS MOOT**.

A review of the file of the instant application indicates that, on September 01, 2011, the Office considered each of the references listed on the PTO-1449 above mentioned and that applicant was informed of such via a PTO-90C communication. Since each of those references listed on the above mentioned IDS has already been considered, this petition is rendered moot.

Accordingly, the petition is **DISMISSED AS MOOT**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Hassan Kizou, Quality Assurance Specialist, can be reached at (571) 272-3088.

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist (QAS)
Technology Center 2400

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.

MAILED
JUL 21 2011
OFFICE OF PETITIONS

Mark S. Graham, Esq.
LUEDEKA, NEELY & GRAHAM, P.C.
P.O. Box 1871
Knoxville TN 37901

In re Patent No. 7,906,109	:
Menart et al.	:
Application No. 10/583,157	: LETTER REGARDING
Issue Date: March 15, 2011	: PATENT TERM ADJUSTMENT
Filed: June 16, 2006	:
Atty Docket No. 33581-US-PCT	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF REVISED PATENT TERM ADJUSTMENT," filed May 13, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from one hundred and ninety-seven (197) days to two hundred and fifty-two (252) 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 two hundred and fifty-two (252) days is **DISMISSED.**

BACKGROUND

On March 15, 2011, the above-identified application matured into US Patent No. 7,906,109 with a patent term adjustment of 197 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

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

Patentee has indicated that this patent is subject to two terminal disclaimers.[1]

At issuance, Patentee was accorded 245 (299 over Three years - 54 appellate excluded - 37 overlap) days of B-delay. Patentee

[1] Petition, page 2.

maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 300[2] days. In other words, Patentee argues that 0 days, not 54 days, should have been excluded from B-delay for time consumed by appellate review.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(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);
> (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.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

> 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:
> (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);

---

[2] As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B-delay period, the over three year period begins on June 24, 2009 and ends on April 18, 2010, the day before the first RCE was filed, which amounts to 299 (not 300) days. See U.S.C. § 154(b)(1)(B)(i).

(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.

OPINION

At issue is the language "[a]ny time consumed by review by the Board of Patent Appeals and Interferences" of 37 C.F.R. § 1.702(b).

Patentee disputes the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. 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). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 54 days, beginning on February 24, 2010, the date of filing of the notice of appeal and ending on April 18, 2010, the subsequent day prior to the date on which a Request for Continued Examination was filed. Thus, B-delay is 208 (299 - 54 - 37 overlap) days.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

CONCLUSION

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/14/2010

TO SPE OF : ART UNIT 3634 Mitchell Katherine (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/583174 Patent No.: 7654300

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571 _____

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: _____

Katherine Mitchell — SPE

3634 — Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Patent No. : 7719475 B2
Application No.: 10/583237
Inventor(s) : Rainer Kuehne
Issued : 05/18/2010
Title : WINDOW-INTEGRATED ANTENNA IN VEHICLES
Attorney Docket No.: 14880/3

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid,* including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: 571-273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Tasneem Siddiqui
For Mary Diggs (Supervisor)
Decisions & Certificates of Correction Branch
(703) **756-1593** or (703) 756-1814
Date: 05/10/2011

Address: Gerard A. Messina
KENYON & KENYON, LLP
One Broadway
New York, New York 10004

ts

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

July 26, 2011

Judith Evans
Evans & Molinelli PLLC
P.O. Box 7027
Fairfax Station, VA 22039

Patent No. : 7,842,673 B2
Appl. No. : 10/583,369
Inventor(s) : Peter R. Brink, et al.
Issued : November 30, 2010
Title : **DELIVERY OF DNA OR RNA VIA GAP JUNCTIONS FROM HOST CELLS TO TARGET CELLS AND A CELL-BASED DELIVERY SYSTEM FOR ANTISENSE OR SIRNA**
Docket No. : P4471US02

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A petition to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/
Virginia Tolbert
For Mary F. Diggs
Decisions & Certificates
of Correction Branch
(571) 272-0460

vt

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

32425
FULBRIGHT & JAWORSKI LLP
600 Congress Avenue
Suite 2400
Austin, TX 78701

MAILED

NOV 04 2010

PCT LEGAL ADMINISTRATION

In re Application of :
MEYER *et al* :
U.S. Application No.: 10/583,415 :
PCT No.: PCT/DE2004/002778 :
Int. Filing Date: 20 December 2004 :
Priority Date: 20 December 2003 :
Attorney Docket No.: DEBE:067US :
For: ENDOTOXIN DETECTION METHOD :

DECISION ON PETITION UNDER 37 CFR 1.137(b)

Applicants' petition to revive under 37 CFR 1.137(b) filed on 20 August 2010 is hereby **GRANTED** as follows:

An acceptable CRF sequence listing was provided. The petition fee for a small entity has been paid. Applicants made the required statement pursuant to 37 CFR 1.137(b)(3). A terminal disclaimer is not required. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

This application is being forwarded to the United States Designated/Elected Office for further processing.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-6-10

TO SPE OF : ART UNIT 1656

SUBJECT : Request for Certificate of Correction for Appl. No.: 10583445 Patent No.: 7732574

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square – 9D10-E
Palm Location 7580

Omega Lewis
Certificates of Correction Branch

703-756-1575

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** 1656 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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FEB 23 2011

PCT LEGAL ADMINISTRATION

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE PA 19482

In re Application of:	:	
THRO, Pierre-Yves	:	DECISION
U.S. Application No.: 10/583,461	:	(37 CFR 1.497(d))
PCT No.: PCT/FR2004/050738	:	
International Filing Date: 20 December 2004	:	
Priority Date: 19 December 2003	:	
Attorney's Docket No.: GRY-144US	:	
For: SURFACE-CLEANING METHOD AND DEVICE USING A LASER BEAM	:	

This decision is issued in response to the "Response To Notice To File Missing Requirements Under 35 U.S.C. 371 In The United States Designated/Elected Office (DO/EO/US)" filed 26 September 2008, treated in part herein as a request to add inventors under 37 CFR 1.497(d). Applicants have paid the required $130 processing fee.

BACKGROUND

On 20 December 2004, applicant filed international application PCT/FR2004/050738. The application claimed a priority date of 19 December 2003, and it designated the United States. On 30 June 2005, 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., 19 June 2006. The international application identified a single applicant/inventor for the United States, Pierre-Yves THRO.

On 19 June 2006, applicant filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, an English translation of the international application. However, the submission did not include payment of the required basic national fee. Accordingly, PCT/FR2004/050738 became abandoned with respect to the United States at midnight on 19 June 2006.

On 23 March 2007, the United States Designated/Elected Office (DO/EO/US) issued a "Notification Of Abandonment" (Form PCT/DO/EO/909) confirming that the application was abandoned for failure to file the basic national fee prior to the expiration of thirty months from the priority date.

On 02 April 2007, applicant filed a petition for revival of the application under 37 CFR 1.137(b).

On 12 September 2007, a decision was issued granting applicant's petition for revival under 37 CFR 1.137(b).

On 26 June 2008, the DO/EO/US issued a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497, the surcharge for filing the oath or declaration later than thirty months after the priority date, and the search and examination fees.

On 26 September 2008, applicant filed a response to the Notification Of Missing Requirements (with required extension fee). The response included payment of the required surcharge, search and examination fees. The response also included a declaration executed by the inventor of record as well as two additional persons, Michel NEU and Jean-Marc WEULERSSE. The declaration and accompanying materials are considered herein as a request under 37 CFR 1.497(d) to add Michel NEU and Jean-Marc WEULERSSE as additional inventors of record, so as to permit acceptance of the declaration filed 26 September 2008.

DISCUSSION

Section 1893.01(e) of the MPEP states the following regarding changes in the inventorship of an international application entering the national stage (emphasis added):

> The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any changes effected under PCT Rule 92*bis*. See 37 CFR 1.41(a)(4). Accordingly, **an oath or declaration that names an inventive entity different than that set forth in the international application will not be accepted for purposes of entering the U.S. national phase unless the requirements under 37 CFR 1.497(d) are satisfied.** These requirements include: (A) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (B) the processing fee set forth in 37 CFR 1.17(i); and (C) the written consent of the assignee if an assignment has been executed by any of the original named inventors (see 37 CFR 3.73(b)).

As noted above, applicant has filed a declaration that names an inventive entity different than that set forth in the international application (specifically, Michel NEU and Jean-Marc WEULERSSE have been added as additional inventors). Accordingly, applicant must satisfy the requirements of 37 CFR 1.497(d) before such declaration can be accepted.

Applicant has provided the required statements of non-deceptive intent from the persons to be added as inventors (Michel NEU and Jean-Marc WEULERSSE) as well as payment of the required processing fee. Requirements (A) and (B) are therefore satisfied. Applicant has not, however, submitted a statement executed by an authorized representative of the assignee consenting to the requested change in inventorship. Requirement (C) of a grantable request to correct inventorship under 37 CFR 1.497(d) is therefore not satisfied.

It is noted that the consent of the assignee must be submitted in compliance with 37 CFR 3.73(b). Accordingly, any statement of consent from the assignee subsequently submitted herein must be accompanied by an acceptable statement in compliance with 37 CFR 3.73(b) (see Form PTO/SB/96).

Based on the above, applicant has not satisfied all the requirements for a grantable request to correct inventorship under 37 CFR 1.497(d).

CONCLUSION

Applicant's request to correct inventorship under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

The inventorship of record remains that set forth in the international application, that is, Pierre-Yves THRO.

The declaration filed 26 June 2008, which includes Michel NEU and Jean-Marc WEULERSSE as additional inventors, is unacceptable on the present record for failure to properly identify the inventorship of record.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should be entitled "Renewed Request Under 37 CFR 1.497(d)" and must include the materials required to satisfy item (C) of a grantable request, as discussed above and in the MPEP, that is, a properly executed statement of consent to the requested change in inventorship from the assignee and an acceptable statement under 37 CFR 3.73(b).

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a)

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/RichardMRoss/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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NOV 07 2011

PCT LEGAL ADMINISTRATION

RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE PA 19482

In re Application of:	:	
THRO, Pierre-Yves, et al.	:	DECISION ON RENEWED
U.S. Application No.: 10/583,461	:	REQUEST UNDER
PCT No.: PCT/FR2004/050738	:	37 CFR 1.497(d)
International Filing Date: 20 December 2004	:	
Priority Date: 19 December 2003	:	
Attorney's Docket No.: GRY-144US	:	
For: SURFACE-CLEANING METHOD	:	
AND DEVICE USING A LASER	:	
BEAM	:	

This decision is issued in response to applicants' "Renewed Petition Under 37 CFR 1.497(d)" filed on 27 April 2011. Applicants have previously paid the required processing fee.

BACKGROUND

The procedural background for the present application was set forth in the decision mailed on 23 February 2011. The decision dismissed without prejudice applicants' request to correct inventorship under 37 CFR 1.497(d), finding that applicants had failed to satisfy all the requirements of a grantable request. Specifically, applicants had failed to provide the consent of the assignee in the form required under 37 CFR 3.73(b).

On 27 April 2011, applicants filed the "Renewed Petition Under 37 CFR 1.497(d)" considered herein.

DISCUSSION

The renewed petition includes a statement executed by a representative of the assignee consenting to the requested change of inventorship, accompanied by the required "Statement Under 37 CFR 3.73(b)" (Form PTO/SB/96). This submission provides the consent of the assignee in compliance with 37 CFR 3.73(b), as required by 37 CFR 1.497(d).

Applicants have now satisfied the final outstanding requirement for a grantable request to correct inventorship under 37 CFR 1.497(d). The requested addition of Michel NEU and Jean-Marc WEULERSSE as additional inventors of record in the present application is therefore appropriately granted.

Based on the above correction, the declaration filed 26 September 2008 is now acceptable in compliance with 37 CFR 1.497(d).

CONCLUSION

Applicants' renewed request to correct inventorship under 37 CFR 1.497(d) is **GRANTED**.

The inventorship of record herein is corrected to add Michel NEU and Jean-Marc WEULERSSE as additional inventors of record.

This application is being referred to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 26 September 2008.

/RichardMRoss/

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/03/10

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: 10583468 Patent No.: 7524856

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: These changes do not introduce new matter and furthermore do not change the scope or meaning of claims

C. S. Aulak
(Primary Examiner)

SPE

1625
Art Unit

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EDWIN D. SCHINDLER
4 HIGH OAKS COURT
P.O. BOX 4259
HUNTINGTON NY 11743-0777

MAILED

JAN 03 2012

OFFICE OF PETITIONS

In re Application of	:	
Barry John Bryar	:	
Application No. 10/583,484	:	DECISION ON PETITION
Filed: June 15, 2006	:	
	:	

This is a decision on the petition, filed October 13, 2011, 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**.

The Notice of abandonment mailed October 11, 2011 held this application to have gone abandoned for failure to timely respond to the Non-Final Office action of April 5, 2011, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before July 5, 2011 or, on or before October 5, 2011, with a three (3)-month extension of time under 37 CFR 1.136.

Petitioner states that a timely reply was submitted electronically with USPTO on October 5, 2011, which included the following papers: a request for three (3) month extension of time, and an amendment.

A review of the written record indicates that the petitioner filed an amendment and fees for a three (3) month extension of time on October 5, 2011. As this was a timely reply, the application is not abandoned in fact.

Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of April 5, 2011 is hereby **withdrawn**.

Telephone inquires regarding this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3657 for appropriate action in the normal course of business.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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Paper No.

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

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JUN 10 2011

OFFICE OF PETITIONS

In re Patent Number: 7,693,032 :
Issue Date: 04/06/2010 :
Application Number: 10/583,529 : NOTICE
Filing or 371(c) Date: 05/10/2007 :
Attorney Docket Number: 61240-8002.US01 :

This is a notice regarding your request for acceptance of a fee deficiency submission, which is treated under 37 CFR 1.28, filed on April 28, 2011.

The Office no longer investigates or rejects original or reissue patents 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 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 Wood
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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HANSRA PATENT SERVICES
4525 GLEN MEADOWS PLACE
BELLINGHAM WA 98226

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NOV 05 2010
OFFICE OF PETITIONS

In re Application of
CHIPPERFIELD, RICHARD F.
Application No. 10/583,531
Filed: 06/16/2008
Attorney Docket No. 5004-2-US

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 26, 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 February 26, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 27, 2009. On September 23, 2009, the Office mailed a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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) 272-3211.

This application is being referred to Technology Center AU 3711 for appropriate action by the Examiner on the reply received on May 26, 2010.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Robert D. Shedd, Patent Operations
THOMSON Licensing LLC
P.O. Box 5312
Princeton NJ 08543-5312

MAILED
MAR 16 2012
OFFICE OF PETITIONS

In re Application of :
Weitbruch et al. :
Application No. 10/583,533 : ON PETITION
Filed: May 7, 2007 :
Attorney Docket No. PD030131 :
For: METHOD AND DEVICE FOR REDUCING LINE LOAD EFFECT

This is a decision on the petition under 37 CFR 1.137(b), filed February 10, 2012, to revive the above-identified application.

This application became abandoned as a result of petitioners' failure to file an appropriate follow-up submission to the Notice of Appeal, filed May 24, 2011, within two (2) months of the filing of the Notice of Appeal. As an appropriate follow-up submission was not filed within two (2) months of the filing of the Notice of Appeal, filed May 24, 2011, 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 July 25, 2011. *See* MPEP 1215.04. A Notice of Abandonment was mailed on February 3, 2012.

Applicants have submitted a proper reply in the form of an RCE and required $930.00 fee and an amendment as the submission, an acceptable statement of the unintentional nature of the delay in filing a follow-up submission to the Notice of Appeal, and the $1,860.00 petition fee.

The petition is **GRANTED**.

This application is being referred to Technology Center AU 2629 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 pertaining to this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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1616 S VOSS ROAD SUITE 750
HOUSTON TX 77057-2631

MAILED

MAR 30 2011

OFFICE OF PETITIONS

In re Application of	:	
Ben Rached, et al.	:	
Application No. 10/583,580	:	ON PETITION
Filed: December 8, 2008	:	
Attorney Docket No. NRT.0227US	:	

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed February 23, 2011.

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

The above-identified application became abandoned for failure to timely file a reply in response to the final Office action mailed July 9, 2010. This Office action set an extendable 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 October 10, 2010. The Office mailed a Notice of Abandonment on February 1, 2011.

Petitioner states that he did not receive the July 9, 2010 final Office action. In support thereof, petitioner has included a copy of master docket report, showing all of the firm's replies docketed for a due date of October 9, 2010.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.[1] A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."[2] "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."[3]

In view of the master docket report submitted on petition, it is concluded that petitioner has established that he did not receive the July 9, 2010 final Office action.

The application is being forwarded to Group Art Unit 2617 for re-mailing of the July 9, 2010 final Office action, setting a new period for reply.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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[1] See MPEP 711.03(c)(II).

[2] MPEP 711.03(c)(II) (emphasis added).

[3] Id.

UNITED STATES PATENT AND TRADEMARK OFFICE

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September 29, 2011

GE HEALTHCARE BIO-SCIENCES CORP.
MELISSA LECK
101 CARNEGIE CENTER
PATENT DEPARTMENT
PRINCETON NJ 08540

In re Application of	:	
Simon L. Stubbs et al.	:	**DECISION ON PETITION**
Application No. 10583591	:	
Filed: 6/19/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. PA0394	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 19, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

United States Patent and Trademark Office

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

MAILED

JAN 19 2011

PCT LEGAL ADMINISTRATION

In re Application of :
Evoy et al. :
Application No.: 10/583,596 :
PCT No.: PCT/US2004/042718 :
Int. Filing Date: 17 December 2004 : DECISION
Priority Date: 18 December 2003 :
Attorney Docket No.: US03 0517 US2 :
For: Serial Communication Device Configurable :
To Operate In Root Mode Or Endpoint Mode :

This is in response to the petition filed on 18 November 2010.

BACKGROUND

International application PCT/US2004/042718 was filed on 17 December 2004, claimed an earlier priority date of 18 December 2003, and designated the United States. The period for payment of the basic national fee in the United States expired as of midnight on 19 June 2006 (since 18 June 2006 was a Sunday). Applicants filed *inter alia* a basic national fee in 10/583,596 on 19 June 2006.

On 24 September 2010, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that the international application had become abandoned with respect to the national stage in the U.S. for failure to timely pay the basic national fee.

DISCUSSION

Review of the instant application file reveals that the Transmittal Letter (Form PTO-1390) filed on 19 June 2006 was directed toward the national stage under 35 U.S.C. 371 of "PCT/IB2004/042718." Petitioner now indicates that "during filing of the US National Application, the incorrect International Application No. was submitted as PCT/IB2004/042718 rather than as PCT/US2004/042718." Resolution of this matter would require a formal petition (and fee) under 37 CFR 1.182, clarifying which international application was intended to enter the national stage under 35 U.S.C. 371. In view of petitioner's payment of the appropriate petition fee, the instant petition is being construed as such a petition under 37 CFR 1.182.

Comparison of the bibliographic data (e.g., title, inventors, international filing date and priority date) related to international application PCT/US2004/042718 reveals that they match those appearing on the Transmittal Letter filed on 19 June 2006. In view of the totality of the evidence currently of record, it would be appropriate to accept petitioner's statement that the instant application was intended as the national stage of PCT/US2004/042718.

In view of the payment of the basic national fee on 19 June 2006, the Notification of Abandonment mailed on 24 September 2010 is regarded as having been issued in error, and accordingly it is hereby **VACATED**.

DECISION

The constructive petition under 37 CFR 1.182 is **GRANTED**, as described above.

The holding of abandonment is **WITHDRAWN**.

This application is being returned to the Office of Patent Application Processing for the processing of this application as the national stage under 35 U.S.C. 371 of PCT/US2004/042718. This processing will include the correction of PALM records to show the status of the application as pending, not abandoned.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283

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ANDRES M. LOZANO
C/O FUNCTIONAL NEUROSCIENCE INC.
442 RUSSELL HILL ROAD
TORONTO ON M5P2S-5 CA CANADA

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
LOZANO	:	
Application No. 10/583,630	:	DECISION ON PETITION
Filed: July 23, 2007	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 30, 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, April 28, 2010, 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 29, 2010.

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.

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 30, 2010, was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

This application is being referred to Technology Center AU 3766 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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NOV 30 2010
OFFICE OF PETITIONS

Perkins Coie LLP
607 Fourteenth Street, NW
Washington DC 20005

In re Application of	:	
Schiemann et al.	:	DECISION
Application No. 10/583,689	:	ON APPLICATION FOR
Filed: June 20, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. : 09097-	:	
8021.US00	:	
Title: 2-(HETERO)-ARYL	:	
SUBSTITUTED	:	
TETRAHYDROQUINOLINE	:	
DERIVATIVES	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)," filed November 17, 2010. Applicants request that the patent term adjustment be corrected from seven hundred and thirty-six (736) days to seven hundred and thirty-nine (739) days.

The request for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(b) is **DISMISSED**.

Applicants are given **TWO MONTHS** from the mail date of this decision to respond. No extension of time will be granted under 37 C.F.R. § 1.136.

On August 17, 2010, the Office mailed a "Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)," which indicated that the Patent Term Adjustment to date was 736 days. The present request for reconsideration, filed November 17, 2010, was timely filed as it was submitted concurrently with the issue fee. See § 1.705(b).

The record supports a conclusion that any patent issuing from this patent is not subject to a terminal disclaimer.

Rule 1.704(b) sets forth, in pertinent part:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an

> application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

A non-final Office action was mailed on November 13, 2009, and a response was not received until February 16, 2010, which is three months and three days later. As such, a reduction of three days was assessed. Applicants have argued that this is improper, and that no reduction should have been assessed, since February 13, 2010 fell on a Saturday and February 15, 2010 fell on a federal holiday. However, Applicants will note that 35 U.S.C. 154(b)(2)(C)(ii)[1] does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. § 21(b)[2] does not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii).

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 after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

---

[1] "With respect to adjustments to patent term made under the authority of paragraph (1)(B), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of 3 months that are taken to respond to a notice from the Office making any rejection, objection, argument, or other request, measuring such 3-month period from the date the notice was given or mailed to the applicant."

[2] "When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day."

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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MINNEAPOLIS, MN 55440-1022

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AUG 16 2010

OFFICE OF PETITIONS

In re Application of
Kiyotaka NAKANO, et *al.*
Application No. 10/583,795
Filed: June 21, 2006
Attorney Docket No. **19672-003US1**
RET/PCG-9009

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 August 13, 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 June 9, 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 1643 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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JUN 21 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,919,086	:
Issued: April 5, 2011	: DECISION ON PATENT TERM and
Application No. 10/583,795	: NOTICE OF INTENT TO ISSUE
Filed: June 21, 2006	: CERTIFICATE OF CORRECTION
Atty. Dkt. No.: 19672-003US1 RET/PCG-9009	:

This is a decision on the application for patent term adjustment filed June 6, 2011 requesting that the patent term adjustment be increased from 235 days to 325 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **GRANTED TO THE EXTENT INDICATED HEREIN**.

The above-identified application matured into U.S. Pat. No. 7,919,086 on April 5, 2011. The patent issued with a patent term adjustment of 235 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 417 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 555 days. Patentee further contests the reduction of 47 days assessed post allowance. Patentee further asserts that the patent term adjustment is subject to further reductions totaling 98 days pursuant to 37 CFR 1.704(c)(8).

With respect to the reduction of 47 days assessed post allowance, patentee is persuasive. A review of the record reveals that the February 18, 2011 was not a failure to engage in reasonable efforts to conclude prosecution or processing. Accordingly, the reduction of 47 days has been restored.

Patentee further asserts reductions totaling 98 days pursuant to 37 CFR 1.704(c)(8). A review of the record reveals that the correct reduction is 99 days in accordance with 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on March 10, 2010. Patentees filed a Request for Continued Examination (RCE) and IDS on August 13, 2010. Prior to filing the RCE, applicant paid the Issue Fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS after the mailing of the Notice of Allowance on March 10, 2010 constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 99 days, counting the number of days in the period beginning on August 13, 2010 and ending on November 19, 2010, the date of mailing of the new Notice of Allowance in response. It is noted that the applicant delay accrued in connection with the IDS filed August 20, 2010 overlaps with the applicant reduction of 99 days under 37 CFR 1.704(c)(10) discussed herein.

Patentee's arguments that the period of adjustment pursuant to 37 CFR 1.702(b) is 555 days rather than 417 days have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 417 days.

35 USC 154(b)(1)(B) states in relevant part:

> 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).

37 CFR 1.702(b) states in relevant part:

> 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: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

> The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 417 days, the period from August 13, 2010, the date that the RCE was filed, to April 5, 2011, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

In view thereof, at the time of issuance, the patent was entitled to an overall adjustment of 183 days (536 days under 37 CFR 1.702 – 353 days of applicant delay under 37 CFR 1.704).

Receipt is hereby acknowledged of the required $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 183 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,919,086

DATED : April 5, 2011 **DRAFT**

INVENTOR(S) : Nakano, 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 235 days

Delete the phrase "by 235 days" and insert -- by 183 days --

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
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In re Patent No. 7,919,086
Issued: April 5, 2011
Application No. 10/583,795
Filing date or 371 date: June 21, 2006
Atty. Dkt. No.: 19672-003US1 RET/PCG-9009

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the request for reconsideration of decision mailed June 21, 2011 with respect to the application for patent term adjustment under 37 CFR 1.704(d) filed June 6, 2011. This request, filed August 23, 2011, is deemed timely filed within the meaning of 37 CFR 1.181(f).

RELEVANT BACKGROUND

Patentees request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until after a final decision has been rendered in Abbott Biotherapeutics Corp v. Kappos, 1:2010cv01853 (D.D.C. 2010).

The request is hereby DENIED. This decision is a final agency action within the meaning of 5 USC §704 for purposes of seeking judicial review. See, MPEP 1002.02.

The above-identified application matured into U.S. Patent No. 7,919,086 on April 5, 2011 with a revised patent term adjustment of 235 days. On June 21, 2011, a decision on patentees' application for patent term adjustment under 37 CFR 1.705(d), filed June 6, 2011, was mailed. The decision under 37 CFR 1.705(d) mailed June 21, 2011 granted a patent term adjustment of 183 days (119 days under 37 CFR 1.703(a) plus 417 days under 37 CFR 1.703(b) less 353 days of applicant delay under 37 CFR 1.704). A Certificate of Correction to this effect issued on August 9, 2011.

Patentees herein request that the patent term adjustment for the above-identified patent be increased from 183 days to 321 days (119 days pursuant to 37 CFR 1.703(a) plus 555 days pursuant to 37 CFR 1.703(b) less 353 days of applicant delay pursuant to 37 CFR 1.704(b)).

Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically,

patentees argue that subsequent to the filing of the request for continued examination on August 13, 2010, examination of the application closed on November 19, 2010, the date upon which the Notice of Allowance was mailed. Thus, patentees argue that no continued examination took place during the 138 day period from November 19, 2010 (the mailing date of the Notice of Allowance) until April 5, 2011 (the date the patent was issued). As such, patentees maintain that the "B delay" should include the 138 days and be increased from 417 to 555 days. Thus, patentees conclude that the correct patent term adjustment is thus 321 days (the sum of 119 days of "A delay" and 555 days of "B delay" minus 353 days of applicant delay").

RELEVANT STATUTES

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(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);
>
> (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.

The implementing regulation, 37 CFR 1.702(b) provides that:

> 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:
>
> (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.

DECISION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 417 days based on the application having fulfilled the requirements of 35 U.S.C. 371 on June 21, 2006 and the patent not having issued as of the day after the date that national stage commenced under 35 U.S.C. 371(b) or (f), June 22, 2009, and a request for continued examination under 132(b) having been filed on August 13, 2010. In other words, the 138-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered 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. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment 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 number of days in the period beginning on the date on

---

[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "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," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date

of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (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), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "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." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the

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[2] Clause (iii) provides for not including (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. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "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" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See, 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See, 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in

response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in BlackLight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See, BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See, In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See, 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37

CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See, 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See, 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has

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[3] Note, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

CONCLUSION

For the above-stated reasons, a review of the petition and file wrapper of the above-identified patent reveals that the above-identified patent is not entitled to a patent term extension or adjustment of 321 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 321 days is **DENIED**.

This decision may be viewed as final agency action. See, MPEP 1002.02(b).

Telephone inquiries specific to this matter should be directed to Attorney Advisor Alesia M. Brown at (571) 272-3205.

Anthony Knight
Director
Office of Petitions

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In re Patent No. 7,919,086	:
Issued: April 5, 2011	: DECISION ON PETITION
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Filing date or 371 date: June 21, 2006	:
Atty. Dkt. No.: 19672-003US1 RET/PCG-9009	:

This is a decision on the petition filed October 24, 2011, requesting that the Director review the Final Agency Decision on Request for Reconsideration of Decision on Application for Patent Term Adjustment ("Decision") mailed by the Office of Petitions on September 23, 2011.

The Decision maintains that the above-identified patent is entitled to one hundred and eighty-three (183) days of patent term adjustment ("PTA"). Patentees request that the Director review the decision and modify the PTA calculation to two hundred and thirty-one (231) days.

The decision of the Director of the Office of Petitions has been reviewed. However, because no error has been found in the decision, the petition under 37 CFR 1.181 is **DENIED**.

The patent term adjustment remains 183 days, as indicated in the final agency decision of September 23, 2011.

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

Andrew Hirshfeld
Associate Commissioner for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Robert D. Shedd, Patent Operations
THOMSON Licensing LLC
P.O. Box 5312
Princeton NJ 08543-5312

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of

LeRoy, et al. :

Application No. 10/583,823

: DECISION ON PETITION

Filed: August 24, 2007

:

Attorney Docket No. **PF030183**

This is a decision on the petition under 37 CFR 1.137(b), filed February 3, 2011, 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 June 23, 2010, 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 September 24, 2010.

The amendment filed February 3, 2011, is noted.

The application is being forwarded to Technology Center 2600, GAU 2629 for further processing.

Telephone inquiries concerning this decision 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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DIW Jun-11

ROBERT D. SHEDD, PATENT OPERATIONS
THOMSON LICENSING LLC
P.O. BOX 5312
PRINCETON NJ 08543-5312

MAILED
JUN 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Le Roy et al.	:	DECISION ON PETITION
Application Number: 10/583,844	:	
Filing Date: 06/22/2006	:	
Attorney Docket Number:	:	
PF030184	:	

This is a decision on the petition under 37 CFR 1.137(a) filed on April 20, 2011.

The petition is **dismissed**.

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

The application became abandoned on December 1, 2010, for failure to timely submit a reply to the non-final Office action mailed on August 31, 2010, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on March 29, 2011.

The first page of the petition is illegible. Specifically, it appears that an error occurred when the petition was faxed to the Office which resulted in the first page being obscured. A new

copy of the petition form should be submitted with any renewed petition.

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

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

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

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

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

The petition lacks item (3).

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

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

[1] 35 U.S.C. § 133.

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

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).[5] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[3]

Petitioner has provided no explanation as to why the delay should be considered unavoidable. In the absence of an adequate explanation as to why the delay should be considered unavoidable, the petition must be dismissed. Any renewed petition must include a documented showing explaining why the entire period of the delay, from the date a reply was due until the date a grantable petition was filed, was unavoidable.

As petitioner has not provided the requisite showing of unavoidable delay, the petition must be **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

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

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

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In 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(m);

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

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

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 petitioners decide to file a petition under 37 CFR 1.137(b), the petition fee due is currently $1,620.00 ($810.00 for a small entity).[4]

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.[5] The

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[4] As Office fees are revised from time-to-time, petitioner is encouraged to check the USPTO website at www.uspto.gov for current fee amounts prior to submission of any petition. Alternatively, petitioner may contact the Office by phone at 1-800-PTO-9199 for fee information.

[5] See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

three (3)-month extension request filed on April 20, 2011, was submitted more than three (3) months after the end of the period for reply to the non-final Office action mailed on August 31, 2010, and therefore is unnecessary. The extension of time fee paid on April 20, 2011, will be refunded to counsel.

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.

The address in the petition is different from the correspondence address. A courtesy copy of this decision will be mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address should be filed if the correspondence address needs to be changed.

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

A reply may also be filed via EFS-Web.

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

Enclosure: Form PTO/SB/64

Cc: PATRICIA A. VERLANGIERI
TWO INDEPENDENCE WAY
PRINCETON NJ 08845-5312

UNITED STATES PATENT AND TRADEMARK OFFICE

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ROBERT D. SHEDD, PATENT OPERATIONS
THOMSON LICENSING LLC
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PRINCETON NJ 08543-5312

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AUG 15 2011

OFFICE OF PETITIONS

In re Application of	:	
Le Roy et al.	:	
Application Number: 10/583,844	:	ON PETITION
Filing Date: 06/22/2006	:	
Attorney Docket Number:	:	
PF030184	:	

This is a decision on the renewed petition under 37 CFR 1.137(a), filed on July 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on December 1, 2010, for failure to timely file a response to the non-final Office action mailed on August 31, 2010, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on March 19, 2011.

The application is restored to pending status.

The duplicate petition fee of $540.00 is unnecessary and will be refunded to counsel's deposit account.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.[1] The three (3)-month extension request filed on July 28, 2011, was submitted more than three (3) months after the end of the period for reply to the non-final Office action mailed on August 31, 2010, and therefore is unnecessary. The extension of time fee paid on July 28, 2011, will be refunded to counsel's deposit account.

[1] See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

The application is being referred to Technology Center Art Unit 2629 for further processing.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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MAILED
JAN 27 2012
PCT LEGAL ADMINISTRATION

In re Application of SAILOR, Michael J., et al. Application No. 10/583,920 Int'l Filing Date: 21 December 2004 Attorney Docket No. 0321.68811	DECISION ON PETITION UNDER 37 CFR 1.78(a)(3) and (a)(6)

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed 18 October 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed applications set forth in the amendment.

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 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 complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the prior-filed applications has been included in an amendment, as provided by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition's statement of unintentional delay is construed to mean the entire delay between the date the claim was due under paragraph (a)(2)(ii) and 1.78(a)(5)(ii) of this section and the date the claim was filed was unintentional. If this is not a correct interpretation, applicants must notify the Office immediately. Having found

that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

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

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

Any questions concerning this matter may be directed to Erin Thomson at (571) 272-3292. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1653 for appropriate action on the amendment filed 18 October 2011, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 and 119(e) to the prior-filed applications.

/Boris Milef/
Boris Milef
PCT Legal Examiner
PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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Nikolaos C. George
JONES DAY
222 E. 41st. Street
New York NY 10017-6702

MAILED
SEP 15 2010
OFFICE OF PETITIONS

In re Patent No. 7,674,459 Fung et al. Issue Date: March 9, 2010 Application No. 10/583,926 Filed: June 20, 2007 Attorney Docket No. 12279-200-999 Title: TREATMENT OF CANCER WITH NOVEL ANTI-IL13 MONOCLONAL ANTIBODIES	DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 5, 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 four hundred fifty-six (456) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 211 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 259 days (June 24, 2009 to March 9, 2010 the day of issuance of the patent.

Patentees contend that the 54 day reduction taken for the submission of the request for a corrected filing receipt pursuant to 37 CFR 1.704(c)(10) should instead be a 14 day reduction. Patentees argument is convincing in that the 54

reduction should instead be a 15 day reduction. 37 CFR 1.704 (c)(10) provides:

> (10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;
>
> or
>
> (ii) Four months;

The Notice of Allowance was mailed on October 16, 2009. On January 15, 2010, patentees filed a request for corrected filing receipt. The submission of the request constituted a failure to engage pursuant to 37 CFR 1.704 (c)(10). This period is 15 days, counting the number of days in the period beginning on January 15, 2010 and ending on January 29, 2010, the date of the mailing of the corrected filing receipt.

Patentees' total delay is 15 days (January 15, 2010 to January 29, 2010.

In view thereof, the patent is entitled to an overall adjustment of 455 days.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred fifty-five **(455)** days.

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

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The 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 Petitions Attorney, Charlema Grant at (571) 272-3215.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,674,459 B2

DATED : March 9, 2010 **DRAFT**

INVENTOR(S) : Fung 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 157 days

Delete the phrase "by 157 days" and insert – by 455 days--

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222 E. 41st. Street
New York NY 10017-6702

MAILED
MAR 02 2012
OFFICE OF PETITIONS

In re Patent No. 8,067,199	:
Fung et al.	: DECISION ON REQUEST
Issue Date: 11/29/2011	: FOR RECONSIDERATION OF
Application No. 10/583927	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 01/29/2009	: and
Attorney Docket No.	: NOTICE OF INTENT TO ISSUE
CASE 1050 US	: CERTIFICAE OF CORRECTION

This is a decision on the petition filed on January 27, 2012, under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred eighty-nine (889) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by eight hundred eighty-nine (889) days is **GRANTED to the extent indicated herein.**

A review of Office records reveals that the Office errantly assessed a reduction of 9 days in accordance with 37 CFR 1.704(c)(10) in connection with the filing of an Information Disclosure Statement ("IDS"), filed October 10, 2011. Office records confirm that the IDS included the statement required by 37 CFR 1.704(d). A review of the application history further confirms that the IDS was not otherwise filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The period of reduction of nine (9) days entered for the IDS is not warranted and is being removed.

A review of the application history also reveals that this Office errantly failed to assess reductions in accordance with 37 CFR 1.704(c)(7) in connection with the filing of a replies to a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (hereinafter "Notification"), mailed April 9, 2007, and in connection with the subsequent abandonment of the application in accordance with 37 CFR 1.704(c)(3) and/or (c)(4).

Applicant filed an initial, defective reply to the Notification on June 8, 2007. Applicant was notified that the reply was defective in a Notification of Defective Response, mailed August 21, 2007.

Applicant thereafter filed a supplemental, defective reply to the Notification on September 25, 2007. Applicant was notified that the supplemental reply was defective in a Notification of Defective Response, mailed August 29, 2008. This Notification of Defective Response set a non-extendable 30 day period for reply.

Applicant thereafter filed a second, supplemental, defective reply to the Notification on September 29, 2008, including a petition under 37 CFR 1.47(a), and supplemented this reply on October 17, 2008.

In a decision on the petition under 37 CFR 1.47(a), Applicant was notified that the application was abandoned for failing to file a complete and proper reply to the Notification of Defective Response, mailed August 29, 2008, the date of abandonment being September 30, 2008.

Applicant filed a petition to revive the application on January 29, 2009, including a complete and proper reply to the Notification, and a decision granting the petition was mailed on February 3, 2009.

Reduction pursuant to 37 CFR 1.704(c)(7)

The reduction pursuant to 37 CFR 1.704(c)(7), beginning on the day after the date the reply having an omission was filed, June 9, 2007, and ending on the date that the reply or other paper correcting the omission was filed (the date of filing the grantable petition), January 29, 2009, is 601 days.

Reduction pursuant to 37 CFR 1.704(c)(3) and/or (c)(4)

A further review of Office records reveals that the Office also errantly neglected to assess a reduction in connection with the abandonment and revival of the application in accordance with 37 CFR 1.704(c)(3). A review of Office records confirms that the application was abandoned on September 30, 2008, and a decision reviving the application was mailed on February 3, 2009. Pursuant to 37 CFR 1.704(c)(3), a reduction of 127 days, beginning on the date of abandonment, September 30, 2008, and ending on date of mailing of the decision reviving the application, February 3, 2009, is appropriate. It is noted the period of reduction pursuant to 37 CFR 1.704(c)(3) overlaps with the period of reduction pursuant to 37 CFR 1.704(c)(7), beginning on the date of abandonment, September 30, 2008, and ending on the date that the reply or other paper correcting the omission was filed (the date of filing the grantable petition), January 29, 2009, for a total of 122 days.

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

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The 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 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 eighty-one (481) days** (1087 days (889 days + 198 days) Office adjustments - 606 days (601 days + 127 days - 122 days overlap) Applicant delay).

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,067,199 B2

DATED : **November 29, 2011**

INVENTOR(S) : Fung 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 880 days.

Delete the phrase "by 880 days" and insert – by 481 days--

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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 RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 095309.57914US	Patent Number: 7,665,869
Filing Date (or 371(b) or (f) Date): December 10, 2004	Issue Date: February 23, 2010
First Named Inventor: Norbert SPAZIER	
Title: Light for the Passenger Compartment of a Motor Vehicle	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature	Date August 17, 2010
Name (Print/Typed) Richard R. Diefendorf	Registration Number 32,390

***Note:** Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☒ *Total of 1 forms are submitted.

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 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1 450.**

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

Mail Date: 09/08/2010

Applicant	: Norbert Spazier	: DECISION ON REQUEST FOR
Patent Number	: 7665869	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/583,957	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 07/25/2007	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **488** 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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MAILED
SEP 26 2011
OFFICE OF PETITIONS

BROWDY AND NEIMARK, PLLC
1625 K STREET N.W.
SUITE 1100
WASHINGTON DC 20006

In re Patent No. 7,869,011	:	
Issue Date : January 11, 2011	:	
Application No. 10/583,997	:	ON PETITION
Filed: August 11, 2008	:	
Attorney Docket No. CHRISTENSEN9A	:	

This is a decision on the petition filed September 1, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee information on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **DISMISSED**.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

The request under 37 CFR 3.81(b) was not accompanied by a statement that the assignment was submitted for recordation before issuance of the patent. As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

---

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

Inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

Any questions concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

Thurman K. Page
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

BROWDY AND NEIMARK, PLLC
1625 K STREET N.W.
SUITE 1100
WASHINGTON DC 20006

In re Patent No. 7,869,011	:	
Issue Date : January 11, 2011	:	
Application No. 10/583,997	:	ON PETITION
Filed: August 11, 2008	:	
Attorney Docket No. CHRISTENSEN9A	:	

This is a decision on the petition filed November 22, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee information 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 Diane Goodwyn at (571) 272-6735. 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.

Thurman K. Page
Petitions Examiner
Office of Petitions

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,028	06/22/2006	Nobuyuki Takakura	1254-0318PUS1	4443

2292 7590 06/21/2011
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
KIM, TAEYOON

ART UNIT	PAPER NUMBER
1651	

NOTIFICATION DATE	DELIVERY MODE
06/21/2011	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):

mailroom@bskb.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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June 17, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Nobuyuki Takakura et al.	:	**DECISION ON PETITION**
Application No. 10584028	:	
Filed: 06/22/2006	:	
Attorney Docket No. **1254-0318PUS1**	:	

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 21, 2006.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings), and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☑ 3 ☑

A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Laura L. Feldman/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,028	06/22/2006	Nobuyuki Takakura	1254-0318PUS1	4443

2292 7590 09/06/2011
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER
KIM, TAEYOON

ART UNIT	PAPER NUMBER
1651	

NOTIFICATION DATE	DELIVERY MODE
09/06/2011	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):

mailroom@bskb.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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September 1, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Nobuyuki Takakura et al.	:	**DECISION ON PETITION**
Application No. 10584028	:	
Filed: 06/22/2006	:	
Attorney Docket No. **1254-0318PUS1**	:	

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) August 16, 2011.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question (One (1) set for EFW filings). Figures 4, 5, and 7 are missing from the last submission, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☑ 3 ☐

A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Laura L. Feldman/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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November 13, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Nobuyuki Takakura et al.	:	**DECISION ON PETITION**
Application No. 10584028	:	
Filed: 06/22/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **1254-0318PUS1**	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) November 1, 2011.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Laura Feldman/
Quality Control Specialist
Office of Data Management
Publications Branch

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CLARK & BRODY
1700 DIAGONAL ROAD, SUITE 510
ALEXANDRIA VA 22314

MAILED
FEB 08 2011
OFFICE OF PETITIONS

In re Application of :
Hiraishi :
Application No. 10/584,271 : DECISION
Filed/Deposited: 23 June, 2006 :
Attorney Docket No. 12137-0004 :

This is a decision on the petition filed on 3 December, 2010, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTE:

Petitioner has ignored the showing and the timeliness requirements under the Rule.

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. §1.181."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there.

Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 24 December, 2009, with reply due absent extension of time on or before 24 March, 2010.

The application went abandoned by operation of law after midnight 24 March, 2010.

The Office mailed the Notice of Abandonment on 6 August, 2010.

On 3 December, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181 and averred non-receipt, and, *inter alia*, Petitioner stated his position that it was unnecessary to provide a copy of the docket sheet and due date calendar and failed to make the statements under the Rule—and so failed to follow and satisfy the guidance in the Commentary at MPEP §711.03(c)(I).

Thus, Petitioner has not completed the showing as discussed below in the citation from the Manual of Patent Examining Procedure (MPEP).

Petitioner is directed to the appropriate guidance (MPEP §711.03(c)(I))—and it is noted that Petitioner not only failed to comply with it, but failed to do so timely under the Rule.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

***

> 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.[1]

***

Even more problematic is that Petitioner's reply to the Notice of Abandonment is late under the rule (37 C.F.R. §1.181), and Petitioner is reminded of the guidance set forth in the Commentary at MPEP §711.03(c) (in pertinent part):

***

C. Treatment of Untimely Petition To Withdraw Holding of Abandonment

37 C.F.R. 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 C.F.R. §1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 C.F.R. §1.181(f).

Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 C.F.R. §1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

***

3. Utility and Plant Applications Filed on or After May 29, 2000

In utility and plant applications filed on or after May 29, 2000, a terminal disclaimer should **not** be required as a condition of granting an untimely petition to withdraw the holding of abandonment. This is because any patent term adjustment is automatically reduced under the provisions of 37 C.F.R. §1.704(c)(4) in applications subject to the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) if a petition to withdraw a holding of abandonment is not filed within two months

[1] *See*: MPEP §711.03(c) (I)(A).

> from the mailing date of the notice of abandonment, and if applicant does not receive the notice of abandonment, any patent term adjustment is reduced under the provisions of 37 C.F.R. §1.704(a) by a period equal to the period of time during which the applicant "failed to engage in reasonable efforts to conclude prosecution" (processing or examination) of the application.
>
> Where the record indicates that the applicant intentionally delayed the filing of a petition to withdraw the holding of abandonment, the Office may simply dismiss the petition as untimely (37 C.F.R. §1.181(f)) solely on the basis of such intentional delay in taking action in the application without further addressing the merits of the petition. Obviously, intentional delay in seeking the revival of an abandoned application precludes relief under 37 C.F.R. §1.137(a) or (b) (***).
>
> ***

A Petitioner unable to comply with and/or otherwise satisfy these requirements may wish to revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

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

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

STATUTES, REGULATIONS

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

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

regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

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

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

Allegations as to the Request to Withdraw the Holding of Abandonment

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

Petitioner appears not to have made the showing required.

---

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

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

[5] 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).

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**.

Thus, it is noted that Petitioner's failure to timely seek relief under the Rule leaves Petitioner with only a petition to revive and application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) as Petitioner's the sole route of relief.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)
Further correspondence with respect to this matter should be addressed as follows:

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

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

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

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

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

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

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CLARK & BRODY
1700 DIAGONAL ROAD, SUITE 510
ALEXANDRIA VA 22314

MAILED
APR 16 2012
OFFICE OF PETITIONS

In re Application of :
Hiraishi :
Application No. 10/584,271 : DECISION
Filed/Deposited: 23 June, 2006 :
Attorney Docket No. 12137-0004 :

This is a decision on the petition filed on 31 March, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

NOTE:

The instant petition was presented to the Office of Petitions for consideration only at this writing.

Petitioner is reminded that cycle time for these matters is in the range of 60-90 days.

Thus, if not response was received from the Office in that time frame, Petitioner would find that the docketing and submission of a Status Inquiry would be appropriate.

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 24 December, 2009, with reply due absent extension of time on or before 24 March, 2010.

The application went abandoned by operation of law after midnight 24 March, 2010.

The Office mailed the Notice of Abandonment on 6 August, 2010.

On 3 December, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181 and averred non-receipt, and, *inter alia*, Petitioner stated his position that it was unnecessary to provide a copy of the docket sheet and due date calendar and failed to make the statements under the Rule—and so failed to follow and satisfy the guidance in the Commentary at MPEP §711.03(c)(I). Thus, Petitioner did not complete the showing as discussed in the guidance in the Commentary at MPEP §711.03(c)(I) –and the petition was dismissed on 28 February, 2011.

On 31 March, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, a reply in the form of an amendment and a statement of unintentional delay.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

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

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

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[2],[3]

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

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[4]

---

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

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

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

As to Allegations of
Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Technology Center/AU 3725 for further processing in due course.

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

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

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

---

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

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WENDEROTH, LIND & PONACK, L.L.P.
1030 15th Street, N.W.,
Suite 400 East
Washington DC 20005-1503

MAILED
JAN 30 2012
OFFICE OF PETITIONS

In re Application of	:	
Shinichiro Isobe	:	
Application No. 10/584313	:	DECISION
Filing or 371(c) Date: 08/11/2006	:	ON PETITION
Patent No.: 8048536	:	
Issue Date: 11/01/2011	:	
Attorney Docket Number: 2006_1029A	:	

This is a decision on the "Request for Corrected Assignee Names on Patent," filed December 12, 2011. The request is properly treated as a petition 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 Petition is **granted**.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect the additional name of SHINICHIRO ISOBE., as the assignee of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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

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OCT 01 2010

OFFICE OF PETITIONS

LICATA & TYRRELL P.C.
66 E. MAIN STREET
MARLTON NJ 08053

In re Patent No.7,759,400	:	
Kohara	:	DECISION FOR REQUEST
Issue Date: July 20, 2010	:	FOR RECONSIDERATION
Application No. 10/584,372	:	OF PATENT TERM
Filed: July 20, 2010	:	ADJUSTMENT
Attorney Docket No. **KUZ0031US.NP**	:	

This is a decision on the "Application for Patent Term Adjustment Determination under 37 CFR 1.705(d)," filed September 17, 2010. Patentees requests recalculation of the patent term adjustment and assert that it should be more than the currently accorded six hundred and seventy-five (675) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

Patentee's are given TWO (2) MONTHS from the mail date of this decision to respond. No extension of time will be granted under 37 CFR 1.136.

Patentee asserts that the period of "B" delay, or over three year delay, is properly calculated using the date of June 23, 2006, which patentee asserts is the day the national stage commenced under 35 U.S.C. 371(b).

Patentee's argument has been considered and is not persuasive. The national stage of commenced on July 7, 2006—which is the date that is thirty months from the priority date of January 7, 2004. See 35 U.S.C. 371(b). The "B" delay period is 275 days. In an international application, this period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See 1.702(b). The priority date of this application is January 7, 2004. As the requirements for early commencement were not met, the national stage commenced in this application on January 7, 2006. Thus, "B" delay is 275 days, counting the number of days beginning on July 8, 2009, and ending on the day before the date the Request for Continued Examination was filed April 8, 2010. See 1.703(b).

In view thereof, no change will be made to the patent term adjustment of 675 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under

35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

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

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

By Mail: Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

Telephone inquiries specific to this matter 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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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED

NOV 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Sarman SINGH	:	
Application No. 10/584,454	:	DECISION ON PETITION
Filed: February 15, 2007	:	TO WITHDRAW
Attorney Docket No. 6054-0001PUS1	:	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 5, 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 Mark J. Nuell, Ph.D. on behalf of the attorneys of record associated with Customer No. 02292.

The attorneys of record associated with Customer No. 02292 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 first copied below until otherwise properly notified.

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

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: SARMAN SINGH
DIVISION OF CLINICAL MICROBIOLOGY,
ALL INDIA INSTITUTE OF MEDICAL SCIENCES
NEW DELHI 110 029 INDIA

cc: MARK J. NUELL, PH.D.
BIRCH, STEWART, KOLASCH & BIRCH, LLP
12770 HIGH BLUFF DRIVE, SUITE 260
SAN DIEGO CA 92130

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/584,454	02/15/2007	Sarman Singh	6054-0001PUS1

CONFIRMATION NO. 4159

POWER OF ATTORNEY NOTICE

2292
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

OC000000044297239

Date Mailed: 11/01/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/05/2010.

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

/dcgoodwyn/

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:08232011

DATE : August 23, 2011

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 7,718,808

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:

Changes which should not be made because of either incorrect line cited or insufficient support for the change is as follows: col. 192, line 50; col. 198, line 61; col. 199, line 48; col. 216, line 7; col. 218, line 41; col. 226, line 11; col. 244, line 10; col. 269, line 61; col. 273, line 51; col. 287, line 9; col. 290, line 19; col. 300, line 59; col. 324, line 63; col. 325, line 10; col. 327, line 38; col. 329, line 7; col. 330, line 7; col. 332, lines 15, 36 & 56; col. 333, lines 8 & 26; col. 351, line 4; and col. 352, line 43.

/JOSEPH MCKANE/
Supervisory Patent Examiner.Art Unit 1626

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:08232011

DATE : August 23, 2011

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 7,718,808

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

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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:

Changes which should not be made because of either incorrect line cited or insufficient support for the change is as follows: col. 192, line 50; col. 198, line 61; col. 199, line 48; col. 216, line 7; col. 218, line 41; col. 226, line 11; col. 244, line 10; col. 269, line 61; col. 273, line 51; col. 287, line 9; col. 290, line 19; col. 300, line 59; col. 324, line 63; col. 325, line 10; col. 327, line 38; col. 329, line 7; col. 330, line 7; col. 332, lines 15, 36 & 56; col. 333, lines 8 & 26; col. 351, line 4; and col. 352, line 43.

/JOSEPH MCKANE/
Supervisory Patent Examiner.Art Unit 1626

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Lawrence S. Perry
Fitzpatrick Cella, Harper & Scinto
30 Rockefeller Plaza
New York, NY 10112

In re Patent No. 7,718,808
Issue Date: May 18, 2010
Appl. No: 10/584,633
Filed: June 26, 2006
For: Correction of Inventorship

This is a decision on the petition filed December 21, 2010 to correct inventorship under 37 CFR 1.324.

The petition is **GRANTED**.

The patented filed is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/Joseph K. McKane /

Joseph K. McKane
Supervisory Patent Examiner Art Unit 1626
Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:01042012

DATE : January 04, 2012

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 7,718,808

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:

In Response to the Request for Reconsideration filed November 9, 2011, the Letter mailed to Applicant on August 24, 2011 noted changes which should not be made to the patent. These noted changes were not approved because either incorrect line numbers were cited or insufficient support from the originally filed specification could not be found for the requested change. Therefore, the following changes were not made to the patent: col. 192, line 50; col. 198, line 61; col. 199, line 48; col. 216, line 7; col. 218, line 41; col. 226, line 11; col. 244, line 10; col. 269, line 61; col. 273, line 51; col. 287, line 9; col. 290, line 19; col. 300, line 59; col. 324, line 63; col. 325, line 10; col. 327, line 38; col. 329, line 7; col. 330, line 7; col. 332, lines 15, 36 & 56; col. 333, lines 8 & 26; col. 351, line 4; and col. 352, line 43.

/Joseph K. McKane/
Supervisory Patent Examiner, Art Unit 1626

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P.O. Box 1450
Alexandria, VA 22313-1450
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Fitzpatrick, Cella, Harper & Scinto
1290 Avenue of the Americas
New York, Ny 10101-3800

Date Mailed : January 24, 2012
Serial No. : 10/584633
Patent No. : 7,718,808
Patent Issued :May 18, 2010
Inventor(s) Takao Nakajima, et al.
Title :THIAZOLE DERIVATIVES

Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent.

In Response to the Request for Reconsideration filed November 9, 2011, the Letter mailed to Applicant on August 24, 2011 noted changes which should not be made to the patent. These noted changes were not approved because either incorrect line numbers were cited or insufficient support from the originally filed specification could not be found for the requested change. Therefore, the following changes were not made to the patent: col. 192, line 50; col. 198, line 61; col. 199, line 48; col. 216, line 7; col. 218, line 41; col. 226, line 11; col. 244, line 10; col. 269, line 61; col. 273, line 51; col. 287, line 9; col. 290, line 19; col. 300, line 59; col. 324, line 63; col. 325, line 10; col. 327, line 38; col. 329, line 7; col. 330, line 7; col. 332, lines 15, 36 & 56; col. 333, lines 8 & 26; col. 351, line 4; and col. 352, line 43.

In view of the foregoing your request is again hereby denied.

Magdalene Talley
For Mary Diggs, Supervisor
Decisions and Certificate
Of Correction Branch
(703)756-1540
FAX 571-270-9942

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Fitzpatrick, Cella, Harper & Scinto
1290 Avenue of the Americas
New York, NY 10101-3800

Date Mailed : January 24, 2012
Serial No. : 10/584633
Patent No. : 7,718,808
Patent Issued :May 18, 2010
Inventor(s) Takao Nakajima, et al.
Title :THIAZOLE DERIVATIVES

Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent.

In Response to the Request for Reconsideration filed November 9, 2011, the Letter mailed to Applicant on August 24, 2011 noted changes which should not be made to the patent. These noted changes were not approved because either incorrect line numbers were cited or insufficient support from the originally filed specification could not be found for the requested change. Therefore, the following changes were not made to the patent: col. 192, line 50; col. 198, line 61; col. 199, line 48; col. 216, line 7; col. 218, line 41; col. 226, line 11; col. 244, line 10; col. 269, line 61; col. 273, line 51; col. 287, line 9; col. 290, line 19; col. 300, line 59; col. 324, line 63; col. 325, line 10; col. 327, line 38; col. 329, line 7; col. 330, line 7; col. 332, lines 15, 36 & 56; col. 333, lines 8 & 26; col. 351, line 4; and col. 352, line 43.

In view of the foregoing your request is again hereby denied.

Magdalene Talley
For Mary Diggs, Supervisor
Decisions and Certificate
Of Correction Branch
(703)756-1540
FAX 571-270-9942

1 1 AUG 2010

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OSTROLENK, FABER, GERB &
SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403

In re Application of	DECISION ON
Frank HENGLEIN et al	
Application No.: 10/584,691	
PCT No.: PCT/EP04/14663	
Filing Date: 23 December 2004	PETITION UNDER
Priority Date: 21 July 2004	
Attorney Docket No.: P/746-7	
For: METAL PIGMENTS COMPRISING ...	
COATING AND USE THEREOF	37 CFR 1.182

This decision is in response to the "PETITION UNDER 37 CFR 1.182 TO CORRECT FILING DATE" filed on 05 October 2009, to correct the "Submission of Declaration" filed on 16 August 2006 in response to the Notification of Missing Requirements because it contained a typographical error in the application number since it was filed as 10/548,691 rather than the correct serial number 10/584,691. The petition fee of $400.00 has been charged to Deposit Account No.: 15-0700.

BACKGROUND

In a decision from this Office on 17 February 2009, the Office granted the decision under 37 CFR 1.181 and indicated that based on the USPTO return postcard it was accepted that the Declaration was timely deposited with U.S. PTO on 22 May 2007.

On 15 July 2009, the USPTO mailed a "NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 C.F.R. 1.495 (Form PCT/DO/EO/903)," indicating that date of receipt of 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) requirements is 22 May 2007, and a date of completion of all 35 USC 371 requirements of 22 May 2007.

On 05 October 2009, applicants filed the current petition to correct the papers filed on 16 August 2006, which included an executed declaration, that identified the application number as 10/548,691 rather than the correct application number 10/584,791.

DISCUSSION

Petitioner states that the response filed on 16 August 2006 accidentally transposed two numbers in application number (10/548,691) assigned for the aforementioned application (10/584,691); however, all of the other information pertaining to the above-identified application was correct.

Therefore, petition to accept the response of 16 August 2006 for the instant application is granted. The Response on 16 August 2006 will be moved and placed in the instant application.

As a result, the Notification of Acceptance (Form PCT/DO/EO/903) mailed on 15 July 2009 is **VACATED** with the mailing of this decision.

A new Notification of Acceptance (Form PCT/DO/EO/903) will be mailed in accordance with this decision

The second charge of $130.00 for the declaration will be refunded to Deposit Account No. 15-0700 since it was paid in excess.

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) to mail a new Notification of Acceptance (Form PCT/DO/EO/903).

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (571) 272-3276
Facsimile: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MAILED
OCT 04 2011
OFFICE OF PETITIONS

SOFER & HAROUN LLP.
317 MADISON AVENUE, SUITE 910
NEW YORK, NY 10017

In re Application of :
Christian Belouet, et al. :
Application No. 10/584,698 : ON PETITION
Filed: May 25, 2007 :
Attorney Docket No.: 979/237 :

This is a decision in response to the petition, filed September 29, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 14, 2009, 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 January 15, 2010. A Notice of Abandonment was mailed on May 10, 2010. On September 29, 2011, 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) a reply in the form of an amendment; (2) the petition fee of $1,860; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 1791 for appropriate action by the Examiner in the normal course of business on the response filed September 29, 2011.

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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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CONTINENTAL TEVES, INC.
ONE CONTINENTAL DRIVE
AUBURN HILLLS MI 48326-1581

MAILED
JUL 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Peter Drott et al.	:	
Application No. 10/584,804	:	DECISION ON PETITION
Filed: July 16, 2007	:	
Attorney Docket No. AP 10862	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit formal drawings in a timely manner in reply to the Notice of Allowability, mailed July 13, 2009, which set a period for reply of three (3) months. Accordingly, this application became abandoned on October 14, 2009. A Notice of Abandonment was mailed on October 26, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected drawings, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the corrected drawings are accepted as being unintentionally delayed.

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

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

/Kimberly Inabinet/

Kimberly Inabinet
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

MAILED
JUL 06 2011
OFFICE OF PETITIONS

KRATON POLYMERS U.S. LLC
16400 Park Row
HOUSTON TX 77084

In re Application of	:	
Noel R.M. de Keyzer et al.	:	
Application No. 10/584,870	:	ON PETITION
Filed: June 8, 2007	:	
Attorney Docket No. L0012US	:	

This is a decision on the petition filed June 7, 2011 under the unintentional provisions of 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 application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office action of October 26, 2010. 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). Accordingly, the date of abandonment of this application is January 27, 2011. A Notice of Abandonment was mailed on May 23, 2011.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (1).

As to item 1, the amendment filed on June 7, 2011, does not *prima facie* place the application in condition for allowance, therefore the reply required must be a Notice of Appeal (and appeal fee), an RCE, or the filing of a continuing application under 37 CFR 1.53(b). See attached courtesy copy of the advisory action.

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

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

By Mail: Mail Stop PETITION
Commissioner for Patents
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 Kimberly Inabinet at (571) 272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

cc: Gregory N. Clements
1901 Roxborough Road
Suite 250
Charlotte, NC 28211

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/584,870	Applicant(s) DE KEYZER ET AL.	
	Examiner Angela C. Scott	Art Unit 1767	

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

THE REPLY FILED 07 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

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

NOTICE OF APPEAL

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

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   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: Please see the attached response to arguments.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Response to Arguments

Applicant's arguments filed June 7, 2011 have been fully considered but they are not persuasive.

Applicants argue that the Polymer E referred to in the rejection does not have a molecular weight within the claimed range. While this may be true, the reference teaches that the molecular weights of the polymers should be within a preferred range of 150,000 to 250,000 (Page 5, lines 21-25), which does encompass the claimed range. Applicants are reminded that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments, i.e., examples. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). MPEP 2123.

Regarding all of the data argued by the applicants, no where have the applicants shown a good side by side comparison of polymers with a coupling efficiency in the claimed range (63 to 80%) as compared to those polymers with a coupling efficiency as taught by de Keyzer et al. (81 to 87%). This is the crux of the rejection of record. The Office contends that the two ranges of coupling efficiency of the polymers are close enough that one of ordinary skill in the art would expect them to behave similarly. The claimed range has a maximum of 80% and the reference has a minimum of 81%. There is not sufficient, proper evidence on the record that a polymer with a coupling efficiency of 80% would behave differently than the same polymer with a coupling efficiency of 81%. This is the evidence that needs to be presented.

Additionally, when discussing the examples of the reference and the instant application, the applicants make remarks of "would likely also have an increase" or "may very well have a negative effect." These remarks are conclusory statements which are not supported by any actual evidence. They are simply remarks of attorney argument.

As for the present invention having a "consisting of" and not "comprising" transitional phrase, this is not true. The current claims are "consisting essentially of" which, as explained in previous responses, is treated as "comprising" absent clear evidence on the record that a component negatively affects the basic and novel characteristics of the invention. This evidence has not been presented, especially in regards to Irganox 1010.

In conclusion, the de Keyzer et al. reference teaches all of the claimed components and ranges except for the coupling efficiency. It has been stated that the claimed range and the taught range as so close as to expect the polymers to have similar properties. Therefore, the claimed properties would therefore be met by having a polymer with the claimed ranges and components. Since the claimed ranges and components are taught in the de Keyzer et al. reference, aside from the coupling efficiency, it follows that unless the coupling efficiency is shown to cause the polymers to behave differently and unexpectedly, the invention is obvious from the de Keyzer et al. reference.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela C. Scott whose telephone number is (571)270-3303. The examiner can normally be reached on Monday through Friday, 8:00 am to 5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. 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.

/A. C. S./
Examiner, Art Unit 1767
June 28, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

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KRATON POLYMERS U.S. LLC
16400 Park Row
HOUSTON TX 77084

MAILED
AUG 02 2011
OFFICE OF PETITIONS

In re Application of :
Noel R.M. de Keyzer et al. :
Application No. 10/584,870 :
Filed: June 8, 2007 :
Attorney Docket No. L0012US :

ON PETITION

This is a decision on the renewed petition filed July 13, 2011 under the unintentional provisions of 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, October 26, 2010, 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 27, 2011. A Notice of Abandonment was mailed on May 23, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $810, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the RCE 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 1767 for appropriate action by the Examiner in the normal course of business on the reply received July 13, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Gregory N. Clements
1901 Roxborough Road
Suite 250
Charlotte, NC 28211

UNITED STATES PATENT AND TRADEMARK OFFICE

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

OCT 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,642,462	:	
Issue Date: January 5, 2010	:	
Application No. 10/584,989	:	ON PETITION
Filed: May 24, 2007	:	
Attorney Docket No. 10184.0003	:	

This is a decision on the petition filed August 26, 2011, 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) 272-2991. 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.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,007	11/02/2007	Kevin Mitzel	99908-30001	4101

31013 7590 05/13/2011
KRAMER LEVIN NAFTALIS & FRANKEL LLP
INTELLECTUAL PROPERTY DEPARTMENT
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER
WANG, TED M

ART UNIT	PAPER NUMBER
2611	

NOTIFICATION DATE	DELIVERY MODE
05/13/2011	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):

klpatent@kramerlevin.com

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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May 13, 2011

KRAMER LEVIN NAFTALIS & FRANKEL LLP
INTELLECTUAL PROPERTY DEPARTMENT
1177 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of	:	
Kevin Mitzel et al.	:	**DECISION ON PETITION**
Application No. 10585007	:	
Filed: 11/2/2007	:	
Attorney Docket No. 99908-30001	:	

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84(a)(2), received in the United States Patent and Trademark Office (USPTO) August 27, 2010.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a)(2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFS filings), and
3. The specification containing the following language as **the <u>first paragraph</u> in the brief description of the drawings.**

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☐ 3 ☑

A renewed petition filed under 37 C.F.R. 1.84(a)(2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

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

July 8, 2011

KRAMER LEVIN NAFTALIS & FRANKEL LLP
INTELLECTUAL PROPERTY DEPARTMENT
1177 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of	:	
Kevin Mitzel et al.	:	**DECISION ON PETITION**
Application No. 10585007	:	
Filed: 11/2/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 99908-30001	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) June 24, 2011.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch