UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
PHILADELPHIA PA 19106-2399

MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Lyn Hughes	:	
Application No. 10/713,926	:	ON PETITION
Filed: November 14, 2003	:	
Attorney Docket No. A01290C	:	

This is a decision on the petition under 37 CFR 1.137(a), filed September 9, 2010, requesting that the above-identified abandoned application be revived on the basis of unavoidable delay.

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

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply to the Notice of Non-Compliant Amendment, mailed October 14, 2009. This Notice set an extendable period for reply of one (1) month. No reply having been received, the application became abandoned on November 15, 2009. The Office mailed a Notice of Abandonment on September 1, 2010.

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

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

Moreover, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."[2]

Petitioner states that Rohm and Haas Company was acquired by Dow Chemical, and in the process, its docketing system was converted to a new docketing system. However, apparently an error occurred during the conversion, as nothing appeared in the instant application as being overdue or due. Petitioner states that "all reasonable and prudent precautions were taken", and that the "new system was checked multiple times". However, petition does not state specifically what precautions were taken, or how specifically the system was checked. In fact, petitioner does not seem to have described how the conversion process occurred at all. Rather, petitioner has merely stated the conclusion that "all reasonable and prudent precautions were taken", without stating any of the facts necessary to draw such a conclusion.

It is true that a delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of

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[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

[2] Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

"unavoidable" delay, provided it is shown that: (1) the error was the cause of the delay at issue; (2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and (3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the due exercise of due care. See MPEP 711.03(c)(III)(C)(2).

Here, however, based on the facts currently submitted, it is not clear whether the error at issue occurred by the employee in the performance of a clerical function, whether the error occurred by an attorney, etc.

If petitioner can not establish that the entire delay was unavoidable, petitioner may wish to consider reviving the application pursuant to 37 CFR 1.137(b). 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 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 was unintentional.

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

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

MAILED

OCT 29 2010

OFFICE OF PETITIONS

In re Patent of Chen	:	
Patent No. 7,202,259	:	
Issue Date: April 10, 2007	:	
Application No. 10/714,066	:	ON PETITION
Filed: November 11, 2003	:	
Attorney Docket No. 085742-0496	:	
Title: THERAPEUTIC AGENTS USEFUL	:	
FOR TREATING PAIN	:	
	:	

This is a decision on the PETITION UNDER 37 C.F.R. 1.183, the PETITION UNDER 37 CFR 1.181, the PETITION UNDER 37 CFR 1.182, and the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSMENT UNDER 37 CFR 1.705. All of the aforementioned petitions were filed on July 22, 2010. In addition, this decision addresses the REQUEST FOR CERTIFICATE OF CORRECTION, filed August 23, 2010.

Patentee requests that the requirements of 37 CFR § 1.705(d) be waived to permit reconsideration of the patent term adjustment in the above-identified patent more than two months after the issuance of the patent. Alternatively, patentee requests that the requirements of the *Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. §154(b)(2)(A)* be waived to permit the reconsideration of the patent term adjustment of the above-identified patent later than 180 days after its issuance.

Patentee requests that the revised 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 ninety-eight (498) days. Patentee requests this correction on the basis that the Office took in excess of three years to issue the patent and in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The petitions under 37 CFR 1.183, 1.182, and 1.181 are hereby **dismissed**.

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

The request for certificate of correction is **dismissed**.

37 CFR 1.705(d) provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section.

On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR § 1.705(d). See *Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. §154(b)(2)(A),* 75 Fed. Reg. 5043 (Feb. 1, 2010)(notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept <u>any</u> requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. § 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. § 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

The instant patent issued on April 10, 2007. The instant request for reconsideration of patent term adjustment under 37 CFR 1.705(d) was filed on July 22, 2010, over three years and two months later. As this request was filed more than 180 days after patent grant, it is appropriate to deny the request for waiver.

In view thereof, the time requirement of 37 CFR 1.705(d) is not met. The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,202,259 is dismissed as untimely filed.

Turning to the August 23, 2010 Request for Certificate of Correction: During July 2010, the Office issued a notice in the federal register clarifying when the Office will change the patent term adjustment for a patent via issuance of a certificate of correction.[1] The Notice states,

> The USPTO ... has determined that it is not appropriate to provide a patent term adjustment recalculation via a certificate of correction under 35 U.S.C. 254 or 255. A certificate of correction is permissible under 35 U.S.C. 254 only for a mistake in a patent that "is clearly disclosed by the records of the Office." *See* 35 U.S.C. 254. While the applicable patent term adjustment is ascertainable from the records of the USPTO, a revised patent term adjustment determination requires a complex calculation that is not "clearly disclosed" by the records of the USPTO. In addition, a certificate of correction is permissible under 35 U.S.C. 255 only for "a mistake of a clerical or typographical nature, or of minor character." *See* 35 U.S.C. 255.
>
> Thus, the USPTO has long maintained that a request for a certificate of correction under either 35 U.S.C. 254 or 255 is not an appropriate venue for seeking a change to the patent term adjustment indicated on the patent....
>
> [I]t is not appropriate to issue a certificate of correction under 35 U.S.C. 254 or 255 to revise the patent term adjustment indicated in the patent unless it is being revised for consistency with: (1) The patent term adjustment determined via a decision on a request for reconsideration under 37 CFR 1.705; or (2) the total patent term adjustment indicated on the Patent Application Information Retrieval (PAIR) screen that displays the patent term adjustment for the patent....
>
> [T]he USPTO will not grant a request for a certificate of correction ... to revise the patent term adjustment indicated in the patent, except in the two situations discussed previously.[2]

Even if the number of days of patent term adjustment on a requested certificate of correction is less than the number of days listed on a patent, a certificate of correction will not be issued unless one of the previously identified exceptions exist. As stated by the Office, with emphasis added,

> If the applicant or patentee wants the USPTO to reconsider its patent term adjustment determination, the applicant must use the procedures set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination, whether the USPTO's patent term adjustment determination is greater <u>or less than</u> the adjustment that the applicant believes to be appropriate.[3]

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[1] *Treatment of Letters Stating That the USPTO's Patent Term Adjustment Determination is Greater Than What the Applicant or Patentee Believes is Appropriate*, 75 Fed. Reg. 42079 (July 20, 2010).

[2] Id. at 42079-42080.

[3] Id. at 42080.

Neither of the two exceptions discussed in the previously quoted language apply in this case. Therefore, the request for a certificate of correction listing a patent term adjustment of 498 days is dismissed.

Receipt of the $400 fee required for consideration of the petition under 37 CFR 1.183 is acknowledged. Receipt of the $400.00 fee required for consideration of the petition under 37 CFR 1.182 is acknowledged. Receipt of the $200 fee for consideration of the request for reconsideration of patent term adjustment is acknowledged. Receipt of the $130.00 processing fee of the requested certificate of correction is acknowledged.

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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551 FIFTH AVENUE, SUITE 1210
NEW YORK NY 10176

MAILED
JUN 22 2011
OFFICE OF PETITIONS

In re Patent No. 6,938,563	:	
Issued: September 6, 2005	:	
Application No. 10/714,081	:	ON PETITION
Filed: November 14, 2003	:	
Attorney Docket No: 5150-20CIP	:	

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed June 16, 2011 under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc.. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

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

Your fee deficiency submission in the amount of $2070, under 37 CFR 1.28 is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6963042	2005-11-08	10/714,125	2003-11-17	

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.

Sole Patentee			
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	/Harry Kouris/	Date (YYYY-MM-DD)	2011-09-09
Name	Harry Kouris		

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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In re Patent No. 6963042
Issue Date: November 8,2005
Application No. 10714125
Filed: November 17,2003
Attorney Docket No. 1345

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

This is a decision on the electronic petition, filed September 9,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 9,2011 . 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.

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: 50325-0811	
Application Number: 10/714,158	Filing Date (or 371(b) or (f) Date): November 13, 2003
Patent Number: 7,668,953	Issue Date: February 23, 2010
First Named Inventor: Keith Sinclair	
Title: Rule-Based Network Management Approaches	

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 /Thomas J. Frame/	Date August 4, 2010
Name (Print/Typed) Thomas J. Frame	Registration Number 47,232

***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.

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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HICKMAN PALERMO TRUONG & BECKER, LLP
2055 GATEWAY PLACE
SUITE 550
SAN JOSE, CA 95110

Mail Date: 08/12/2010

Applicant	: Keith Sinclair	: DECISION ON REQUEST FOR
Patent Number	: 7668953	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/714,158	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/13/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1735** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE CA 94085-4040

MAILED

AUG 22 2011

OFFICE OF PETITIONS

In re Application of :
Garland et al. :
Application No. 10/714,283 :
Filed: November 14, 2003 :
Attorney Docket No. 7330.P001 :
Title: SYSTEMS AND METHODS TO :
MONITOR FILE STORAGE AND :
TRANSFER ON A PEER-TO-PEER :
NETWORK :

DECISION ON PETITION
PURSUANT TO
37 C.F.R. § 1.137(B)

This is a decision on the petition filed August 8, 2011, pursuant to 37 C.F.R. § 1.137(b), 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 submit an Appeal Brief within two-months of the filing of a Notice of Appeal, filed on November 22, 2010. No extensions of time pursuant to 37 C.F.R. § 1.136(a) were received. Accordingly, the above-identified application became abandoned on January 23, 2011. A Notice of Abandonment was mailed on July 25, 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.

37 C.F.R. § 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional. Since the statement contained in this petition varies from the language required by 37 C.F.R. § 1.137(b)(3), the statement contained in this petition is being construed as the statement required by 37 C.F.R. § 1.137(b)(3) and Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.

Petitioner has submitted the petition fee, an Appeal Brief along with the associated fee, and a statement that is being construed as the proper statement of unintentional delay.

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, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the Appeal Brief that was received on August 8, 2011 can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[2] All other inquiries

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1 See Rule 1.137(d).

2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written

concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAR 10 2011
OFFICE OF PETITIONS

In re Patent No. 7,024,288 :
Issue Date: April 4, 2006 :
Application No. 10/714,351 : ON PETITION
Filed: November 17, 2003 :
Patentee(s): John M. King :

This is a decision on the petition under 37 CFR 1.378(c), filed on December 28, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The present petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Fredric J. Zimmerman 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.

Additionally, 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. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is noted that the address given in the present petition slightly differs from the correspondence address of record. Thus, a courtesy copy of this decision is being mailed to the address given in the petition. If appropriate, a power of attorney or authorization of

agent along with a "Fee Address Indication" and/or "Request for Customer Number" forms should be submitted, if petitioner desires to receive future correspondence regarding maintenance fees for the above patent. See USPTO forms PTO/SB/47 and PTO/SB/125.

This patented file is being forwarded to Files Repository.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Fredric J. Zimmerman
Department of the Navy, Office of Counsel, Bldg. D-31
Naval Surface Warfare Center
3824 Strauss Avenue, Suite 103
Indian Head, MD 20640-5152

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110128

DATE : January 21, 2011

TO SPE OF : ART UNIT

SUBJECT : Request for Certificate of Correction on Patent No.: 7438907

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:

/Misook Yu/
Supervisory Patent Examiner.Art Unit 1643

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

SEP 21 2010

OFFICE OF PETITIONS

In re Application of
Douglas DEEDS
Application No. 10/714,504
Filed: November 13, 2003
Attorney Docket No. **004770.00499**

DECISION ON PETITION
UNDER 37 CFR 1.8(b)

This is a decision on the petition, filed April 30, 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 decision by the Board of Patent Appeals and Interference of December 18, 2009, which set a two (2) month shortened statutory period for reply. Accordingly, a reply was due on or before February 18, 2010.

Petitioner states that "on December 17, 2009, the Board of Patent Appeals and Interference issued its decision on Appeal, which decided Applicant's appeal in the above application."

A review of the file record discloses that on December 18, 2009, the Board of Patent Appeals and Interference issued a decision which affirmed in part the examiner's rejection of claims 1-4, 7, 8, 10, 13-15, and 17-23. **The rejection of claims 12, 24 and 25 were reversed.**

If the Board affirms a rejection against independent claims 1-4, 7, 8, 10, 13-15, and 17-23, reverses all rejections against dependent claims 12, 14 and 25, after expiration of the period for further appeal, the examiner should either:

(A) convert dependent claims 12, 24 and 25 into independent form by examiner's amendment, cancel claims 1-4, 7, 8, 10, 13-15, and 17-23 in

which the rejection was affirmed and issue the application with claims 12, 24, 25; or

(B) set a one (1) month time limit in which appellant may rewrite dependent claims 12, 24 and 25 in independent form. Extensions of time under 37 CFR 1.136(a) will not be permitted. If no timely reply is received the examiner will cancel claims 1-4, 7, 8, 10, 13-15, and 17-23 and issue the application with allowed claims 12, 24 and 25 only.

In view of the above, the holding of abandonment for failure to timely file a reply to the Board Decision of December 18, 2009, is hereby withdrawn and the application restored to pending status.

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

This application is being referred to Technology Center AU 3746 for appropriate action in the normal course of business.

Thurman K. Page

Thurman K. Page
Petitions Examiner
Office of Petitions

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Jackson Lum	:	
Application No. 10/714,592	:	NOTICE
Filed: November 14, 2003	:	
Attorney Docket No. **812-2**	:	

This is a notice regarding your request filed December 2, 2010, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

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
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FITZPATRICK CELLA HARPER & SCINTO
1290 Avenue of the Americas
NEW YORK, NY 10104-3800

MAILED
DEC 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Koji TAKEKOSHI, et *al.*	:	
Application No. 10/714,654	:	DECISION GRANTING PETITION
Filed: November 18, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **03500.017720.**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 27, 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 19, 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 2624 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-15-10

TO SPE OF : ART UNIT 1765

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/715246 Patent No.: 7335239

CofC mailroom date: 12-08-10

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

A Green
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.

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

Comments: _____

Nadi Norton
SPE

1713
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-15-10

TO SPE OF : ART UNIT 1765

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/715246 Patent No.: 7335239

CofC mailroom date: 12-08-10

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

A Green
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.

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

Comments: _____

Nadi Norton
SPE

1713
Art Unit

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

MAILED

MAR 01 2011

OFFICE OF PETITIONS

In re Patent No. 7,892,559	:
Straten et al.	: DECISION ON REQUEST FOR
Issue Date: February 22, 2011	: RECONSIDERATION OF
Application No. 10/715,417	: PATENT TERM ADJUSTMENT
Filed: November 19, 2003	:
Attorney Docket No.	:
60820.000004	:
Title: SURVIVIN-DERIVED	:
PEPTIDES AND USE THEREOF	:

This is a decision on the petition filed under 37 CFR 1.705(b) on January 3, 2011, which in light of the issuance of the patent 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 forty-nine (1,049) days.

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

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 640 (629 + 11) days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 753 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 November 20, 2006 and ends on December 11, 2008, the day before the RCE was filed, and is 753 days. See 35 U.S.C. 154(b)(1)(B)(i).

The time taken up by the notice of appeal is excluded from the period of B-delay pursuant to 37 CFR 1.703(b)(4) in connection

with the Notice of Appeal filed June 12, 2008. The reduction of 183 days commenced June 12, 2008; the date that the Notice of Appeal was filed, and ended December 11, 2008, the day before the filing of the request for continued examination. See, 37 CFR 1.703(b)(4).

Patentees' delay total 345 days.

In view thereof, the patent is entitled to an overall adjustment of 865 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 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) 272-3215.

Charlema Grant

Charlema Grant
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.
10/715,462	11/19/2003	Kang Soo Seo	46500-000581/US	3758

30593 7590 01/31/2011
HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON, VA 20195

EXAMINER
SHIBRU, HELEN

ART UNIT	PAPER NUMBER
2484	

MAIL DATE	DELIVERY MODE
01/31/2011	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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Commissioner for Patents
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P.O. BOX 8910
RESTON VA 20195

MAILED

JAN 31 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of
SEO, KANG SOO et al.
Application No. 10/715,462
Filed: November 19, 2003
For: **RECORDING MEDIUM HAVING DATA STRUCTURE FOR MANAGING REPRODUCTION OF AT LEAST VIDEO DATA RECORDED THEREON AND RECORDING AND REPRODUCING METHODS AND APPARATUSES**

DECISION ON PETITION
TO SUSPEND UNDER
37 CFR § 1.103(a)

This is a decision on the petition for suspension filed January 4, 2011.

37 C.F.R. § 1.103 Suspension of action by the Office, states in part:

> (a) *Suspension for cause.* On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action under this paragraph must specify a period of suspension **not exceeding six months**. Any petition for suspension of action under this paragraph must also include:
>
> (1) A showing of good and sufficient cause for suspension of action; and
>
> (2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office. [emphasis added]

709 [R-2] Suspension of Action, states in part:...

> Suspension of action under 37 CFR 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR 1.704(c)(1).

The petition requests a period of suspension for 6 months. The claims of the present application include at least one feature commensurate in scope with at least one feature claimed in Application No. 10/715,511. Furthermore, this feature forms at least one basis for arguing patentability in the Appeal of Application No. 10/715,511. As such, the outcome of the Appeal in Application No. 10/715,511 may be dispositive of patentability in the subject application.

The petition filed January 4, 2011 is **GRANTED.** Pursuant to applicant's request filed on January 4, 2011, action by the Office is suspended on this application under 37 CFR 1.103(a) for a period of six months. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Telephone inquiries concerning this decision should be directed to Mehrdad Dastouri at 571-272-7418.

/Mehrdad Dastouri/

Mehrdad Dastouri
Quality Assurance Specialist
Technology Center 2400

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.
10/715,462	11/19/2003	Kang Soo Seo	46500-000581/US	3758

30593 7590 08/04/2011
HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON, VA 20195

EXAMINER
SHIBRU, HELEN

ART UNIT	PAPER NUMBER
2484	

MAIL DATE	DELIVERY MODE
08/04/2011	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
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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

In re Application of: SEO, et al.
Appl. No.: 10/715462
Filed: November 19, 2003
For: RECORDING MEDIUM HAVING DATA STRUCTURE FOR MANAGING REPRODUCTION OF AT LEAST VIDEO DATA RECORDED THEREON AND RECORDING AND REPRODUCING METHODS AND APPARATUSES

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on July 5, 2011. This is the second petition for suspension. The first suspension was filed on January 4, 2011 and Granted on January 31, 2011.

The petition is **GRANTED**.

37 C.F.R. § 1.103 Suspension of action by the Office, states in part:

> (a) Suspension for cause. On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action under this paragraph must specify a period of suspension not exceeding six months. Any petition for suspension of action under this paragraph must also include:
> (1) A showing of good and sufficient cause for suspension of action; and
> (2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office. [emphasis added]

709 [R-2] Suspension of Action, states in part:

> Suspension of action under 37 CFR 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR 1.704(c)(1).

The petition requests a period of suspension for 6 months. The claims of the present application include at least one feature commensurate in scope with at least one feature claimed in Application No. 10/715,511. Furthermore, this feature forms at least one basis for arguing patentability in the Appeal of Application No. 10/715,511. As such, the outcome of the Appeal in Application No. 10/715,511 may be dispositive of patentability in the subject application.

Pursuant to applicant's request filed on July 5, 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of six (6) months from July 5, 2011. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to Kim Huynh whose telephone number is (571) 272-4147.

/Kim Huynh/

Kim Huynh
Quality Assurance Specialist
Technology Center 2400

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LION BUILDING
1233 20TH STREET N.W., SUITE 501
WASHINGTON DC 20036

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SEP 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,972,206 :
Issue Date: July 5, 2011 :
Application No. 10/715,598 : DECISION ON PETITION
Filed: November 19, 2003 :
Attorney Docket No. SHO-0058 :

This is a decision on the Petition Under 37 C.F.R. 3.81 And Request For Certificate Of Correction Pursuant To 37 C.F.R. 1.323, filed July 25, 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 urges 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:

"WMS Gaming Inc., Waukegan, IL (US)"

to:

--Universal Entertainment Corporation, 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 (PTO/SB/44) submitted with Petition.

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.

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. 7,972,206.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: NIXON PEABODY LLP
300 S. Riverside Plaza
16th Floor
Chicago, Illinois 60606

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

MAILED
MAR 01 2011
OFFICE OF PETITIONS

In re Patent No. 7,720,226 :
Issue Date: May 18, 2010 :
Application No. 10/715,824 : DECISION ON PETITION
Filed: November 19, 2003 :
Attorney Docket No. NG (ES) 019478 US ORD :

This is a decision on the Petition For Correction of Assignee's Name, filed October 29, 2010, which is being treated as a Petition under 37 CFR §3.81(b), requesting correction on the Title Page of the subject patent to identify the correct assignee's name.

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

Petitioner urges that the present Petition was submitted to correct assignee's name on the previously submitted PTOL-85B and that such error to be corrected was inadvertent. Accordingly, petitioner requests that a Certificate of Correction be issued to correct the 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. However, after reviewing the Office records, a corrected Certificate of Correction was previously signed and sealed on December 14, 2010. (copy enclosed)

Inquiries related this communication should be directed to Cheryl Gibson-Baylor 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.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,720,226 B2
APPLICATION NO. : 10/715824
DATED : May 18, 2010
INVENTOR(S) : Terry M. Turpin

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

Title Page (73) Assignee, Delete "Essex Corporation" and insert --Northrop Grumman Systems Corporation--.

Signed and Sealed this

Fourteenth Day of December, 2010

David J. Kappos

David J. Kappos
Director of the United States Patent and Trademark Office

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OFFICE OF PETITIONS

WHITEFORD, TAYLOR & PRESTON LLP
7 ST. PAUL STREET
BALTIMORE MD 21202-1636

In re Application of :
Gosweiler :
Application No. 10/715,861 : ON PETITION
Filed: November 19, 2003 :
Attorney Dkt. No.: 010564/00081 :
For: BREATH RESPONSIVE FILTER :
BLOWER RESPIRATOR SYSTEM :

This is in response to the "PETITION TO RESET PERIOD FOR REPLY BASED ON FAILURE TO RECEIVE OFFICE ACTION", filed November 23, 2011.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

This above-identified application became abandoned for failure to timely file a response to the non-final Office Action, which was mailed on May 24, 2011. The non-final Office Action set a three (3) month shortened statutory period for reply. Accordingly, this application became abandoned on August 25, 2011. This decision precedes the mailing of a Notice of Abandonment.

Petitioner contends that he did not receive the non-final Office action of May 24, 2011 because it was mailed to the incorrect address. Petitioner states that a request to change the correspondence address was submitted on September 14, 2010. Thus, petitioner argues the May 24, 2011 Office action was mailed to the wrong address. As such petitioner has requested the re-mailing of the Office action set with a new reply period.

Petitioner's argument has been considered but has been determined to be unpersuasive. A review of the record shows that the Office action which was mailed on May 24, 2011 was mailed to the correspondence address of record. Although a request to change the correspondence address of record was submitted on September 14, 2010, the request was not submitted by an attorney of record. A review of the record shows that attorney Mark Comtois has not been authorized to prosecute the instant application. As such an attorney or agent acting in a representative capacity pursuant to 37 CFR 1.34, may not sign a change of correspondence address where an executed declaration has been filed.

In view of the above, the Office action was mailed to the correct correspondence address of record. The time period for reply will not be reset. Further, in light of the above and the fact that the maximum extendable reply period expired on November 25, 2011 the application is abandoned.

ALTERNATIVE VENUE

Petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

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

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

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

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

Cc: Duane Morris LLP
505 9th Street N.W. Suite 1000
Washington, D.C. 20004

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Paper No.

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AUG 3 1 2010

OFFICE OF PETITIONS

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Patent No. 7,507,415	:	DECISION ON REQUEST
Arroyo et al.	:	FOR
Issue Date: March 24, 2009	:	RECONSIDERATION OF
Application No. 10/715,868	:	PATENT TERM ADJUSTMENT
Filed: November 17, 2003	:	and
Atty Docket No. 06132/075002	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 13, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred and seventy-seven (677) 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 sixty-six (676) is **GRANTED to the extent indicated herein.**

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged (Petitioner has submitted $400, when $200 was due, and the excess $200 will be refunded to Deposit Account No. 03-2095 in due course).

Petitioner has asserted that the period of examination delay associated with the issuance of this patent should be 120 days, and not 75 days, due to the fact that the issue fee was received not on September 8, 2008, but rather on July 24, 2008 (which is four months and 120 days prior to the issuance of this patent). In light of the petition pursuant to 37 C.F.R. § 1.181 that was filed on September 8, 2008, the copy of the date-stamped

postcard receipt that was presented concurrently therewith, and the January 22, 2009 decision which granted the petition to withdraw the holding of abandonment, this Office concurs with this assertion.

The period of 75 days of examination delay has been removed from Office records, and a period of 120 days of examination delay has been inserted in its place.

Patentee has miscalculated one period of delay. 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 November 18, 2006 and ends on March 25, 2008, the day before the first RCE was filed, which amounts to 494 (not 495) days. See U.S.C. 154(b)(1)(B)(i). Considering overlap of 68 days, a period of Office delay of 426 days is being entered for B delay. (The period of B delay of 199 days entered at issuance is being removed).

As such, the patent term adjustment is 676, not 677 days.

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred and seventy-six (676) days.**

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,507,415 B2

DATED : **Mar. 24, 2009** **DRAFT**

INVENTOR(S) : Arroyo 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 404 days

Delete the phrase "by 404 days" and insert – by 676 days--

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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OFFICE OF PETITIONS

In re Application of	:	
Ramakrishnan et al.	:	
Application No. 10/716,008	:	ON APPLICATION FOR
Filed: November 18, 2003	:	PATENT TERM ADJUSTMENT
Docket No. 15030US02	:	

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. 1.705), filed September 16, 2010. Applicants submit that the patent term adjustment to be indicated on the patent is one thousand three hundred six (1306) days, not nine hundred fourteen (914) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent.

In addition, applicants dispute the period of reduction of 1 day, pursuant to 37 CFR 1.704(b), for Applicant delay in filing a response on March 2, 2009 to the non-final Office action, mailed December 1, 2008.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even in this instance 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]

To the extent that applicants otherwise request correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **DISMISSED**.

---

[1] 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.

On June 16, 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 914 days.

Applicants dispute the period of reduction of 1 day, pursuant to 37 CFR 1.704(b), for Applicant delay in filing a response on March 2, 2009, a Monday, to the non-final Office action, mailed December 1, 2008.

While the March 2, 2009 response was timely with respect to avoiding abandonment, it was not timely for purposes of determining patent term adjustment. Per 37 cFR 1.704(b), applicants are responsible for replying to an Office action within three months of the date the Office action was mailed or given to them. The date of receipt in the Office is the salient date for purposes of determining patent term adjustment. If applicants wanted to avoid the 1 day reduction, applicants should have utilized USPS Express Mail Service or faxed the reply prior to March 2, 2009 or mailed the correspondence with sufficient time to ensure that the correspondence was received in the Office (and stamped with a date of receipt) before the expiration of the three-month period. *See* MPEP 2731.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 914 days.

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) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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WOODS FULLER SHULTZ & SMITH P.C.
ATTN: JEFFREY A. PROEHL
P.O. BOX 5027
SIOUX FALLS SD 57117

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OFFICE OF PETITIONS

In re Patent No. 6,971,612	:	
Issue Date: December 6, 2005	:	
Application No. 10/716,088	:	ON PETITION
Filed: November 18, 2003	:	
Attorney Docket No. 23-0622	:	

This is a decision on the petition under 37 CFR 1.378(c), filed December 2, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on December 7, 2011 for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

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

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cc:

VERONICA W. LOWERY
1271 WASHINGTON AVENUE #259
SAN LEANDRO CA 94577

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 08/30/10

TO SPE OF : ART UNIT 2178

SUBJECT : Request for Certificate of Correction for Appl. No.: 10716194 Patent No.: 7464194

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: Approved.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Stephen Hong/ 2178

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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(Weatherford) Wong Cabello Lutsch Rutherford & Brucculeri LLP
20333 Tomball Parkway, 6th floor
Houston TX 77070

MAILED

DEC 01 2010

OFFICE OF PETITIONS

In re Application of:	:	
David M. Tucker et al	:	
Application No. 10/716,248	:	PETITION DECISION
Filed: November 17, 2003	:	
Attorney Docket No. 205-0034USRI	:	

This is a decision on the petitions under 37 CFR 1.183 filed August 4, 2010, which is being treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.64.

The petitions are **dismissed**.

Petitioner requests waiver of the signature requirement of a reissue application supplemental declaration. The originally named inventor, David M. Tucker, who signed the originally filed declaration, is allegedly refusing to sign the supplemental reissue declaration. 37 CFR 1.47 are directed to situations where the inventor refuses to execute an application for patent, or cannot be found. However, petitions under 37 CFR 1.47 are only applicable to the initial execution of an original oath or declaration and are not applicable to supplemental oaths or declarations by the originally signing inventor. In such circumstances, the USPTO will consider a petition under 37 CFR 1.183 requesting waiver or the requirements of 37 CFR 1.64 that each of the actual inventors execute the supplemental oath or declaration.

MPEP 603 states in part:

> When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. See MPEP § 409.03(a).

In discussing waiver requirements under 37 CFR 1.183, the Office is guided by proof similar to that required when an applicant is unavailable or refuses to sign. Petitioner indicates that the non-signing inventor Tucker refuses to sign the supplemental declaration.

MPEP 409.03(d)(II) states in part:

> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.
> Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

The petition indicates that nonsigning inventor Tucker instructed petitioner that he could only be contacted through his attorney, Wayne Clawater. According to the petition, Clawater acknowledged a first email sent to him but has not responded to any further emails.

Petitioner should mail a complete copy of the supplemental reissue declaration and amended claims to Clawater's mailing address, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach attorney Clawater continue to fail, then applicant will have established that the inventor cannot be reached (through his attorney) after diligent effort or has refused to join in the application. The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

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

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

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

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

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

David Bucci
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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(Weatherford) Wong Cabello Lutsch Rutherford & Brucculeri LLP
20333 Tomball Parkway, 6th floor
Houston TX 77070

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of:	:	
David M. Tucker et al.	:	
Application No. 10/716,248	:	PETITION DECISION
Filed: November 17, 2003	:	
Attorney Docket No. 205-0034USRI	:	

This is a decision on the renewed petition, filed December 21, 2010, which is being treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.64.

The petition is **Granted**.

An originally named inventor, David Tucker, who signed the originally filed declaration, is allegedly refusing to sign a supplemental reissue declaration. Petitions under 37 CFR 1.47(a) apply to situations where a joint inventor refuses to join in an application or cannot be found or reached. However, petitions under 37 CFR 1.47(a) are only applicable to the initial execution of an original oath or declaration and are not applicable to supplemental oaths or declarations by the originally signing inventor. In such circumstances, the USPTO will consider a petition under 37 CFR 1.183 requesting waiver or the requirements of 37 CFR 1.64 that each of the actual inventors execute the supplemental oath or declaration.

MPEP 603 states in part:

> When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. See MPEP § 409.03(a).

In discussing waiver requirements under 37 CFR 1.183, the Office is guided by proof similar to that required when an applicant is unavailable or refuses to sign. Petitioner indicates that the non-signing inventor Iwamura cannot be located to sign the replacement declaration.

MPEP 409.03(d) (II) states in part:

> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.
> Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

The renewed petition provides evidence that the non-signing inventor, David Tucker, through his attorney, Wayne Clawater, cannot be located or refuses to sign the supplemental reissue declaration.

The application is forwarded to Technology Center Art Unit 2856.

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

David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 2/22/10

TO SPE OF : ART UNIT 2169

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/716251 Patent No.: 7660795B2

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: _____

9/7/10

PAGE 1/1 * RCVD AT 9/7/2010 9:50:02 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/46 * DNIS:2734042 * CSID: * DURATION (mm-ss):00-48

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04-18-11

TO SPE OF : ART UNIT 2175

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/716339 Patent No.: 7056122

CofC mailroom date: 04-18-11

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

Angela Green
Certificates of Correction Branch
(703) 756-1541

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.

Approved

Comments: _____

/Dana Ross/ 3725

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York NY 10036

MAILED
FEB 08 2012
OFFICE OF PETITIONS

In re Patent No. 7,364,686	:	
Issued: 04/29/2008	:	
Application No. 10/716,426	:	NOTICE
Filed: 11/20/2003	:	
Attorney Docket No. P-3403-US1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 23, 2012.

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) 272-3211.

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
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DEC 08 2011
OFFICE OF PETITIONS

NIXON & VANDERHYE P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Patent No. 7,246,002	:	
Issue Date: 07/17/2007	:	
Application No. 10/716,454	:	DECISION ON PETITION
Filed: 11/20/2003	:	
Attorney Docket No. 839-1406	:	

This is a decision on the petition under 37 CFR 1.378(c), filed November 16, 2011, to accept the unintentionally delayed payment of the maintenance fee for the above-identified patent.

The petition is **granted**.

The patent issued July 17, 2007. The grace period for paying the maintenance fee expired on July 18, 2011. This petition was filed timely under the provisions of 37 CFR 1.378(c) because it was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e). Accordingly, the maintenance fee in this case is accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

The $1,130.00 maintenance fee due at 3.5 years and the $1,640.00 surcharge after expiration where late payment is unintentional will be charged to the Deposit Account as authorized.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATTERSON THUENTE CHRISTENSEN
PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

MAILED
AUG 16 2010
OFFICE OF PETITIONS

In re Application of	:	
Gandras	:	
Application No. 10/716,853	:	ON APPLICATION FOR
Filed: November 20, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 2005.115US01	:	

This is in response to the PATENT TERM ADJUSTMENT LETTER OF CANDOR AND GOOD FAITH, filed April 28, 2010, which is being treated as a petition under 37 CFR § 1.705(b). Applicant requests recalculation of the determination of patent term adjustment partly on the basis that the Office will take in excess of three years to issue this patent.

To the extent that applicant 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 in this instance 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 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].

To the extent that applicant otherwise requests correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **one thousand three hundred seven (1307) days.** A copy of the updated PALM screen, showing the determination, is enclosed.

On April 2, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified

---

[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.

application. The Notice stated that the patent term adjustment to date is 1297 days.

Applicant discloses that the Office failed to enter a reduction pursuant to 37 CFR 1.704(c)(7) in connection with the filing of a non-compliant appeal brief on August 13, 2007. Applicant filed a non-compliant appeal brief on August 13, 2007. On September 17, 2007, applicant filed a compliant appeal brief. Applicant is informed that ordinarily there are no reductions during the appeal period. The filing of a defective appeal brief is not an omission within the meaning on 37 CFR 1.704(c)(7) because it is not a *reply* and the rule only considers filing a reply with an omission as a failure to engage. Therefore, no reduction is warranted in connection with the filing of a non-compliant appeal brief on August 13, 2007.

Applicant argues that the Office failed to enter an adjustment for Office delay in mailing an Office action after the BPAI issued a decision on May 28, 2009. Pursuant to 37 CFR 1.702(a)(3), a 10 day period of adjustment will be entered for the period beginning on September 29, 2009, the date after four months after the May 28, 2009 BPAI decision was mailed, and ending on October 8, 2009, the date a final Office action was mailed.

In view thereof, the determination of patent term adjustment at the time of mailing of the Notice of Allowance is **one thousand three hundred seven (1307) days** (1344 days of Office delay -37 days of applicant delay).

The $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b) will be charged to deposit account no. 16-0631.

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 Senior Petitions Attorney Shirene Willis Brantley at (571) 272-3230.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of adjusted PALM calculation

Day : Saturday
Date: 8/14/2010

PALM INTRANET

Time: 14:49:34

PTA Calculations for Application: 10/716853			
Application Filing Date:	11/20/2003	PTO Delay (PTO):	1334
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	37
Post-Issue Petitions:	0	Total PTA (days):	1287
PTO Delay Adjustment:	-10		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
88	08/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		10	
80	04/02/2010	MAIL NOTICE OF ALLOWANCE			
79	03/30/2010	ISSUE REVISION COMPLETED			
78	03/30/2010	DOCUMENT VERIFICATION			
77	03/30/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
76	03/29/2010	NOTICE OF ALLOWABILITY			
71	01/12/2010	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
70	01/08/2010	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
69	01/07/2010	DATE FORWARDED TO EXAMINER			
68	12/22/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
67	12/22/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
66	01/07/2010	DISPOSAL FOR A RCE / CPA / R129			
65	12/22/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
64	10/08/2009	MAIL FINAL REJECTION (PTOL - 326)			
63	10/08/2009	FINAL REJECTION			
62	09/09/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
61	09/09/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
60	07/28/2009	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
59	07/08/2009	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			

58	07/06/2009	CORRESPONDENCE ADDRESS CHANGE			
57	05/28/2009	MAIL BPAI DECISION ON APPEAL - REVERSED	693		38
56	05/28/2009	BPAI DECISION - EXAMINER REVERSED			
55	05/28/2009	MAIL - BPAI DECISION 41.50(B) IN IFW: 196(B)			
54	05/28/2009	BPAI DECISION 41.50(B)			
53	12/08/2008	CORRESPONDENCE ADDRESS CHANGE			
52	11/12/2008	DOCKETING NOTICE MAILED TO APPELLANT			
51	11/12/2008	ASSIGNMENT OF APPEAL NUMBER			
50	08/29/2008	APPEAL AWAITING BPAI DOCKETING			
49	10/09/2007	APPEAL READY FOR BPAI REVIEW			
48	10/26/2007	EXAM. ANS. REVIEW COMPLETE			
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45	09/20/2007	APPEAL BRIEF REVIEW COMPLETE			
44	09/20/2007	DATE FORWARDED TO EXAMINER			
43	09/17/2007	APPEAL BRIEF FILED			
42	09/10/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
41	09/08/2007	APPEAL BRIEF REVIEW COMPLETE			
40	09/08/2007	DATE FORWARDED TO EXAMINER			
39.1	08/13/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
39	08/13/2007	APPEAL BRIEF FILED			
38	07/06/2007	NOTICE OF APPEAL FILED			
37	05/22/2007	MISCELLANEOUS INCOMING LETTER			
36	05/21/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
35	05/15/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
34	04/19/2007	MAIL FINAL REJECTION (PTOL - 326)			
33	04/16/2007	FINAL REJECTION			
32	02/02/2007	DATE FORWARDED TO EXAMINER			
31	01/19/2007	RESPONSE AFTER NON-FINAL ACTION		37	28
30	01/05/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
29	01/04/2007	DATE FORWARDED TO EXAMINER			
28.1	12/13/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
28	12/13/2006	RESPONSE AFTER NON-FINAL ACTION			
27	12/05/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			

26	11/30/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
25	10/23/2006	MAIL NON-FINAL REJECTION	641		-1
24	10/17/2006	NON-FINAL REJECTION			
23	04/25/2006	CASE DOCKETED TO EXAMINER IN GAU			
22	04/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
21	04/13/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	04/13/2005	CASE DOCKETED TO EXAMINER IN GAU			
19	02/04/2005	APPLICATION RETURN FROM OIPE			
18	02/04/2005	APPLICATION RETURN TO OIPE			
17	02/04/2005	APPLICATION DISPATCHED FROM OIPE			
16	02/04/2005	APPLICATION IS NOW COMPLETE			
15	01/11/2005	ADDITIONAL APPLICATION FILING FEES			
14	12/14/2003	ADDITIONAL APPLICATION FILING FEES			
13	11/12/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
12	02/19/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
11	03/10/2004	ADDITIONAL APPLICATION FILING FEES			
10	11/20/2003	CLAIM PRELIMINARY AMENDMENT			
9	03/10/2004	SMALL ENTITY STATEMENT (37 CFR 1.27)			
6	03/10/2004	APPLICANT HAS SUBMITTED A NEW SPECIFICATION TO CORRECT CORRECTED PAPERS PROBLEMS			
5	02/19/2004	CORRECTED PAPER			
4	02/04/2004	CLEARED BY OIPE CSR			
3	02/04/2004	CASE CLASSIFIED BY OIPE			
2	12/18/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/20/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7327845	2008-02-05	10717168	2003-11-18	40551.0002US01

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	/s Timothy B. Scull /	Date (YYYY-MM-DD)	2012-02-10
Name	Timothy B. Scull	Registration Number	42137

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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In re Patent No. 7327845
Issue Date: February 5,2008
Application No. 10717168
Filed: November 18,2003
Attorney Docket No. 40551.0002US01

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

This is a decision on the electronic petition, filed February 10,2012 ,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 February 10,2012 . 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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PATTERSON & SHERIDAN, LLP / INTERCAT EQUIPMENT
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056-6582

MAILED
JUN 03 2011
OFFICE OF PETITIONS

In re Patent No. 7,510,647 :
Issued: March 31, 2009 :
Application No. 10/717,249 : NOTICE
Filed: November 19, 2003 :
Attorney Docket No. CAT/009 :

This is in response to the paper filed March 31, 2011 under 37 CFR 1.28(g)(2) requesting that status as a Small Entity be removed.

In accordance with the March 31, 2011 request, status as a Small Entity has been removed.

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.

Additionally, a courtesy copy of this decision is being mailed to the address given on the request; however, the Office will mail all future correspondence solely to the address of record.

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Patterson & Sheridan, LLP
595 Shrewsbury Avenue
Suite 100
Shrewsbury, NJ 07702

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7308507	2007-12-11	10717289	2003-11-19	60046.0060US01

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	/Leonard J. Hope/	Date (YYYY-MM-DD)	2012-01-23
Name	Leonard J. Hope	Registration Number	44774

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7308507
Issue Date: December 11,2007
Application No. 10717289
Filed: November 19,2003
Attorney Docket No. 60046.0060US01

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

This is a decision on the electronic petition, filed January 23,2012 ,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 January 23,2012 .
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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 6925351
Issue Date: August 2,2005
Application No. 10717367
Filed: November 19,2003
Attorney Docket No. GN.001

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

This is a decision on the electronic petition, filed August 13,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 13,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,925,351	2005-08-02	10/717,367	2003-11-19	GN.001

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	/Cathrine K. Kinslow/	Date (YYYY-MM-DD)	2010-08-13
Name	Cathrine K. Kinslow	Registration Number	51886

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.**

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1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether 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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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

NOV 02 2010

OFFICE OF PETITIONS

In re Patent No. 7,657,336	: DECISION ON REQUEST
Rao et al.	: FOR
Issue Date: 02/02/2010	: RECONSIDERATION OF
Application Number: 10/717,418	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 11/19/2003	:
Atty Docket No.	:
15145US02	:

This is a decision on the REQUEST FOR RECONSIDERATION OF USPTO RECALCULATION OF PATENT TERM ADJUSTMNET IN VIEW OF *WYETH*, filed on June 10, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred fifty-eight (1758) 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 one thousand seven hundred fifty-five (1755) days.

The petition is unsigned. In this regard, the /s/ signature is improper because no slash mark has been provided after the signature. See 37 CFR 1.4(d)(2)(i).

Petitioners assert (a) that a two (2) day period of reduction for applicant delay pursuant to 37 CFR 1.704(b) for the filing of a reply to an Office action on June 30, 2008, three months and two (2) days after the Office action was mailed on March 28, 2008, is incorrect and should be removed; and (b) that the period of reduction for applicant delay pursuant to 37 CFR 1.704(c)(10) associated with the filing of an amendment or other paper filed after the mailing of a notice of allowance, filed on December 16, 2008, should be 48 days rather than 49 days as assessed by the Office.

With regard to the two (2) day period pursuant to 37 CFR 1.704(b), 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 C.F.R. § 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 September 16, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1128 days. This determination was based in part on the period of reduction of two (2) days associated with the reply filed on June 30, 2008, three months and (2) days after the Office's mailing of a first Office action on March 28, 2008. PALM records indicate that the issue fee payment was received in the Office on December 16, 2009. No filing of an application for patent term adjustment preceded the payment of the issue fee. 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 December 16, 2009. Accordingly, it is appropriate to dismiss this petition as untimely filed under 1.705(b).

Consideration under 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 issue raised should have been timely raised on application for patent term adjustment under § 1.705(b).

Further, with regard to the assertion that the period of reduction under 37 CFR 1.704(c)(10) should have been 48 days rather than 49 days, pursuant 35 U.S.C. 154(b)(3)(B) and implementing regulation 37 CFR 1.705(d), any request for reconsideration of the patent term adjustment indicated on the patent must be filed within two (2) months of the date the patent issued.

On January 13, 2010, the Office mailed the revised Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent was projected to issue on February 2, 2010, and that the patent term adjustment to date was 1086 days. This determination was based in part on the period of reduction for applicant delay pursuant to 37 CFR 1.704(c) of 49 days for the filing of an amendment or other paper filed after the notice of allowance. On December 16, 2009, an amendment and drawings were filed after the mailing of the notice of allowance. On February 2, 2010, 49 days after the amendment was filed, the application issued as U.S. Patent No. 7,657,336. No request for reconsideration under 37 CFR 1.705(d) was filed within two (2) months after the date the patent issued. As the subject request for reconsideration was not filed until June 10, 2010, which is over two (2) months after

the date the patent issued, it is appropriate to dismiss this petition as untimely filed under § 1.705(d).

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. 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.

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

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.
10/717,500	11/21/2003	Joseph Chappell	33322.00205.US24/205E	8924

13565 7590 08/02/2011
McKenna Long & Aldridge LLP
4435 Eastgate Mall
Suite 400
San Diego, CA 92121

EXAMINER
KALLIS, RUSSELL

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
08/02/2011	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

AUG 0 2 2011

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

McKenna Long & Aldridge LLP
4435 Eastgate Mall
Suite 400
San Diego CA 92121

In re Application of:
Chappell et al.
Serial No.: 10/717,500
Filed: November 21, 2003
Attorney Docket No:
33322.00205.US24/205E

: PETITION DECISION

This is in response to the petition filed on July 19, 2011 under 3 7 CFR 1.181 to correct the misclassification of submitted Information Disclosure Statements. Specifically, applicants request correction of the classification in PAIR of the Information Disclosure Statements submitted on February 1, 2011 and May 20, 2011 in connection with the above-referenced application and consideration by the Examiner of the documents and information contained therein.

Applicants argue the "Information Disclosure Statements were submitted in connection with the above-captioned application on February 1, 2011 and May 20, 2011. Each Information Disclosure Statement was prepared in accordance with 37 C.F.R 1.97 and 1.98. As required under 37 C.F.R 1.98, each Information Disclosure Statement contained 1) a list of all patents, publications, applications, or other information submitted for consideration by the Office, including a column that provides a space next to each document to be considered, for the examiner's initials and a heading that clearly indicates that the list is an Information Disclosure Statement; and 2) legible copies of all items listed. The items either were in English or a translation was provided. A copy of the misclassified Information Disclosure Statements filed on February 1, 2011 and May 20, 2011 is attached.

The submitted Information Disclosure Statement included a tabular Form PTO-1449, which was classified as an "IDS," and a written disclosure of information. In each instance, the written disclosure of information was misclassified in PAIR as a "Transmittal Letter" (February 1, 2011, "Transmittal Letter" of 5 pages; and May 20, 2011, "Transmittal Letter" of 2 pages). Consequently, the information contained therein may not be considered or reviewed by the Examiner."

Applicants' argument has been accorded careful consideration and is persuasive. PAIR will be corrected to reflect the misclassification of the submitted Information Disclosure Statements of February 1, 2011 and May 20, 2011.

DECISION

The petition is **GRANTED.**

The examiner is instructed to consider the IDS of February 1, 2011 and May 20, 2011 which was misclassified in PAIR as a "Transmittal Letter" (February 1, 2011, "Transmittal Letter" of 5 pages; and May 20, 2011, "Transmittal Letter" of 2 pages).

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

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.

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,593,638	:	DECISION ON REQUEST
Pohjola et al.	:	FOR
Issue Date: September 22, 2009	:	RECONSIDERATION OF
Application No. 10/717,601	:	PATENT TERM ADJUSTMENT
Filed: November 21, 2003	:	and
Atty Docket No. 088245-2354	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on November 19, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred three (1103) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred seventy-five (975) days.

The B delay is 498 days, not 499 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 period of B delay, the over three year period began on November 22, 2006, and ended on April 2, 2008, *the day before* the RCE was filed, and is 498 (not 499) days. *See* 35 U.S.C. § 154(b)(1)(B)(i).

Further, a review of the record confirms that an additional period of reduction should be entered for applicant's failure to engage pursuant to 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on October 9, 2007. Thereafter, on January 8, 2008, applicant filed an amendment under 1.312. The Office mailed a response to the 312 communication on February 26, 2008. Accordingly, pursuant to 1.704(c)(10), a period of reduction of 50 days is being entered for the period beginning on January 8, 2008 and ending on February 26, 2008.

Further, applicant filed a Request for Continued Examination (RCE) and IDS on April 3, 2008. 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 October 9, 2007 constituted a further failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 77 days, counting the number of days in the period beginning on April 3, 2008 and ending on June 18, 2008, the date of mailing of a non-final Office action in response.

In view thereof, the revised patent term adjustment has been corrected to nine hundred seventy-five days (604 + 498 - 50 - 77).

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 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-five **(975)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,593,638 B2

DATED : **September 22, 2009** **DRAFT**

INVENTOR(S) : Pohjola 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 604 days

Delete the phrase "by 604 days" and insert – by 975 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20110310

DATE : March 10, 2011

TO SPE OF : ART UNIT: 2857

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/717,736 Patent No.: 7,689,383

C of C Mailroom date: 11/13/2009

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
703-756-1814

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: _____

DREW A. DUNN
SUPERVISORY PATENT EXAMINER
SPE

2857
Art Unit

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Paper No.

CLARK HILL PLC
150 NORTH MICHIGAN AVENUE
SUITE 2700
CHICAGO IL 60601

MAILED
NOV 16 2010
OFFICE OF PETITIONS

In re Patent No. 7174999 :
Issue Date: 02/13/2007 :
Application Number: 10/717752 :
Filing or 371(c) Date: 11/19/2003 :
Attorney Docket Number: 913/45959A/363A-Cont. :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on September 1, 2010.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

Douglas Wood
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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STOEL RIVES LLP - SLC
201 SOUTH MAIN STREET, SUITE 1100
ONE UTAH CENTER
SALT LAKE CITY UT 84111

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of Hixon et al. Application No. 10/718,852 Filed: November 20, 2003 Attorney Docket No. 35681/7	: : : : :	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 6, 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 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 request was signed by Jared L. Cherry on behalf of all attorneys/agents of record who are associated with Customer Number 32642. All attorneys/agents associated with Customer Number 32642 have been withdrawn. Applicants are reminded that there is no attorney of record at this time.

All future correspondence will be directed to assignee, QuicKutz, Inc., at the address indicated below.

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

cc: QUICKUTZ, INC.
7 SOUTH 1550 WEST, SUITE 600
LINDON UT 84042

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,067,019	2006-06-27	10/719,046	2003-11-24	

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	/Vincent T. Pace/	Date (YYYY-MM-DD)	2010-08-11
Name	Vincent T. Pace	Registration Number	31049

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7067019
Issue Date: June 27,2006
Application No. 10719046
Filed: November 24,2003
Attorney Docket No. 1568-003

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

This is a decision on the electronic petition, filed August 11,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 11,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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TUTUNJIAN & BITETTO, PC
20 CROSSWAYS PARK NORTH
SUITE 210
WOODBURY, NY 11797

MAILED

NOV 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Kenneth Nelson, et al.	:	
Application No. 10/719,413	:	ON PETITION
Filed: November 2, 2003	:	
Attorney Docket No. 513-2	:	

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, March 18, 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 June 19, 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 $810; 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. 12/844,444.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquires concerning this application should be directed to the Technology Center.

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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In re Patent No. 7131826
Issue Date: November 7,2006
Application No. 10719605
Filed: November 21,2003
Attorney Docket No. 009053/00022

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

This is a decision on the electronic petition, filed December 6,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 6,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7131826	2006-11-07	10719605	2003-11-21	009053/00022

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	/jcmaynard 46208/	Date (YYYY-MM-DD)	2010-12-06
Name	Jeffrey C. Maynard	Registration Number	46208

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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MAILED
MAR 28 2011
OFFICE OF PETITIONS

COOPER & DUNHAM, LLP
30 Rockefeller Plaza
20th Floor
NEW YORK NY 10112

In re Patent No. 7,778,711 :
Issued: August 17, 2010 :
Application No.: 10/719,659 : NOTICE
Filed: November 20, 2003 :
Attorney Docket No: **78624/JPW/BB** :

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

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

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

OCT 22 2010

OFFICE OF PETITIONS

In re Application of
Podshivalov et al.
Application No. 10/719,890
Filed: November 21, 2003
Attorney Docket No. 18959US01

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 12, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 10/392,358, filed March 19, 2003, as set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

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

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority

under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3282.

This matter is being referred to Technology Center Art Unit 3664 for appropriate action on the amendment filed October 12, 2010, 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.

Liana Walsh
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/719,890	11/21/2003	3664	658	18959US01	20	3

CONFIRMATION NO. 1437

CORRECTED FILING RECEIPT

23446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

OC000000044108180

Date Mailed: 10/21/2010

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)

Sergei Podshivalov, San Jose, CA;
Charles Abraham, Los Gatos, CA;

Power of Attorney: The patent practitioners associated with Customer Number 23446

Domestic Priority data as claimed by applicant

This application is a CIP of 10/392,358 03/19/2003 PAT 6,813,560

Foreign Applications

If Required, Foreign Filing License Granted: 02/20/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/719,890**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method and apparatus for distribution of satellite navigation data

Preliminary Class

701

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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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Patent No. 7,548,522 :
Issue Date: June 16, 2009 :
Application No. 10/720,701 : ON PETITION
Filed: November 24, 2003 :
Attorney Docket No. 038779/271570 :

This is a decision on the petition filed August 13, 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**.

Telephone inquiries concerning this decision may be directed to the April M. Wise at (571) 272-1642. 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.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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

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P.O. BOX 1022
MINNEAPOLIS, MN 55440

MAILED
MAR 23 2011
OFFICE OF PETITIONS

In re Application of :
Lawrence W. Yonge III et al :
Application No. 10/720,742 : ON PETITION
Filed: November 24, 2003 :
Attorney Docket No. 04838-077001

This is a decision on the petition, filed March 22, 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 11, 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 2454 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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PATENT MANAGEMENT GROUP
1320 N. COURTHOUSE ROAD
9TH FLOOR
ARLINGTON VA 22201-2525

MAILED
MAR 02 2011
OFFICE OF PETITIONS

In re Application of	:
Christopher L. Helbling, et al.	:
Application No. 10/720,868	: DECISION GRANTING PETITION
Filed: November 24, 2003	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 03-1017	:

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 1, 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 7, 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]

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Joseph R. Palmieri 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. Palmieri desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. 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 2614 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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WOLF GREENFIELD (Microsoft Corporation)
C/O WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Sivaprasad Padisetty et al. :
Application No. 10/720,893 : DECISION ON PETITION
Filed: November 24, 2003 :
Attorney Docket No. **M1103.70583US00** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 26, 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 April 24, 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)(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 July 25, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is not a correct reading of the statement appearing in the petition.

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

This application is being referred to Technology Center AU 2195for 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.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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McAndrews, Held & Malloy, Ltd.
Suite 3400
500 W. Madison Street
Chicago, IL 60605

MAILED
JUL 19 2011
OFFICE OF PETITIONS

In re Patent of Kammler et al.	:	
Patent No. 7,909,693	:	
Issue Date: March 22, 2011	:	DECISION ON PETITION
Application No. 10/720,931	:	
Filing Date: November 24, 2003	:	
Attorney Docket No. 14936US02	:	

This is a decision on the paper filed March 23, 2011, 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 thousand two hundred sixty-seven (1,267) 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 thousand two hundred sixty-seven (1,267) 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 1,266 days. 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, 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 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.

The petition requests the patent term adjustment be increased by three days. Specifically, the petition requests the patent term adjustment be increased from 1,264 days to 1,267 days.

Issue 1

Pursuant to 35 U.S.C. § 1.154(b)(1)(B)(i), the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") does not include "any time consumed by continued examination of the application."

The Office has promulgated 37 C.F.R. § 1.703(b), which states, with emphasis added,

> 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.

The petition contends 37 C.F.R. § 1.703(b)(1) is inconsistent with the statute. The petition argues the "time consumed by continued examination" should begin the day after a RCE is filed, not the date the RCE is filed.

The Office notes one of the arguments *appears* to be based on an assertion the Office's interpretation of the phrase "time consumed by appellate review" is inconsistent with the Office's interpretation of the phrase "time consumed by continued examination" because the Office does not include the date a Notice of Appeal is filed as part of the time consumed by appeal. However, the date a notice of appeal is filed is included as part of the time consumed by appeal. *See* 37 C.F.R. § 1.703(b)(4).

The Office has considered the arguments set forth in the petition. However, the Office is not persuaded 37 C.F.R. § 1.703(b)(1) is inconsistent with 35 U.S.C. § 1.154(b)(1)(B)(i).

In view of the prior discussion, the petition fails to establish the Office acted improperly when the Office included the date the RCE was filed as part of the time consumed by continued examination.

Issue 2

In this case, the issue fee was submitted on a Monday, which was three months and two days after the Office issued the Notice of Allowance. As a result, the Office entered a two-day reduction in patent term adjustment. The petition asserts entry of the two-day reduction was improper.

The Office has determined the entry of the 2-day reduction was improper in view of the provisions of 35 U.S.C. § 21(b). Therefore, the 2-day reduction has been removed.

Conclusion

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

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 one thousand two hundred sixty-six (1,266) 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.	:	7,909,693 B2
APPLICATION NO.	:	10/720,931
DATED	:	March 22, 2011
INVENTOR(S)	:	Keith D. Kammler 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 1264 days.

Delete the phrase "by 1264 days" and insert -- by 1267 days--

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ROSENBAUM & SILVERT,P.C.
1480 TECHNY ROAD
NORTHBROOK IL 60062

MAILED
SEP 14 2010
OFFICE OF PETITIONS

In re Patent No. 7,018,408	:	
Issue Date: March 28, 2006	:	
Application No. 10/720,932	:	ON REQUEST
Filed: November 24, 2003	:	
Attorney Docket No. 6051-009	:	

This is a decision on the communication filed June 8, 2010, requesting to reinstate the above identified patent.

The request is **GRANTED**.

Applicant states that the first maintenance fee and the surcharge fee for late payment within six months was timely deposited on March 29, 2010 (March 28, 2010 being a Sunday). Applicants further states that, "Included in the Maintenance Fee Transmittal Form is a certificate of correspondence, signed and dated March 29, 2010, and a recital that "a check for the amount of $1,110.00 for the full payment of the maintenance fee and any necessary surcharge is enclosed."

Applicants have submitted a copy of the above to meet the requirements of 37 CFR § 1.8(a).

The original documents along with the check in the amount of $1,110 have not yet been associated with the above-identified patent. Therefore, a total of $1,110.00 will be charged to deposit account no. 18-2000, as authorization was provided.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

The patent file is being referred to Files Repository.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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PATENT MANAGEMENT GROUP
1320 N. COURTHOUSE ROAD
9TH FLOOR
ARLINGTON VA 22201-2525

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Robert A. Chingon, et al.	:	
Application No. 10/720,938	:	DECISION GRANTING PETITION
Filed: November 24, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 03-1028	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 11, 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 31, 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 2614 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.*

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

Kenyon & Kenyon LLP
1500 K Street, N.W.
Ste. 700
Washington, D.C. 20005

MAILED
FEB 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Keith KOCHO	:	DECISION GRANTING PETITION
Application No. 10/721,071	:	UNDER 37 CFR 1.137(b)
Filed: 26 November 2003	:	
Atty. Docket No.: 12819/2	:	

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 December 2007 ("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 March 2008, with notification mailed 25 July 2008.

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.

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.

The file does not indicate that 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.

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 2141 for further action on the filed Response.

David Bucci
Petitions Examiner
Office of Petitions

cc: Mr. Thomas J. Frame
6119 McCommas Blvd.
Dallas, Texas 75214

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

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
990 Marsh Road
Menlo Park CA 94025

MAILED
OCT 08 2010
OFFICE OF PETITIONS

In re Application of	:	
Dominic Bennett, et al.	:	
Application No. 10/721,117	:	DECISION DISMISSING PETITION
Filed: November 25, 2003	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. CLAR 1067-1	:	

This is a decision on the petition under 37 CFR 1.313(a), filed October 1, 2010, requesting withdrawal of the above-identified application from issue.

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

A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on July 1, 2010, with the issue fee being due on or before October 1, 2010. The petition states that the issue fee in this case has not been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to Terri Johnson at (571) 272-2991.

The matter is being referred to Technology Center AU 3688 for appropriate processing of the RCE filed October 1, 2010, and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
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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SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
990 Marsh Road
Menlo Park CA 94025

MAILED
OCT 08 2010
OFFICE OF PETITIONS

In re Application of	:	
Dominic Bennett, et al.	:	
Application No. 10/721,117	:	DECISION DISMISSING PETITION
Filed: November 25, 2003	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. CLAR 1067-1	:	

This is a decision on the petition under 37 CFR 1.313(a), filed October 1, 2010, requesting withdrawal of the above-identified application from issue.

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

A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on July 1, 2010, with the issue fee being due on or before October 1, 2010. The petition states that the issue fee in this case has not been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to Terri Johnson at (571) 272-2991.

The matter is being referred to Technology Center AU 3688 for appropriate processing of the RCE filed October 1, 2010, and for consideration of the concurrently filed information disclosure statement.

/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
www.uspto.gov

Sheppard, Mullin, Richter & Hampton, LLP
390 Lytton Avenue
Palo Alto, CA 94301

MAILED
MAR 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Dominic Bennett et al.	:	
Application No. 10/721,117	:	DECISION ON PETITION
Filed: November 25, 2003	:	TO WITHDRAW
Attorney Docket No. 23YH-153182 [CLAR 1067-01]	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 16, 2011.

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

A review of the file record indicates that the power of attorney to Sheppard, Mullin, Richter & Hampton, LLP, has been revoked by the assignee of the patent application on March 11, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Davidson Berquist Jackson & Gowdey, LLP
Attn: CLARIA/Dr. Brian Siritzky, Esq.
4300 Wilson Blvd. 7th Floor
Arlington, VA 22203

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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Decision Date : December 1, 2011

In re Application of :

Dominic Bennett

Application No : 10721117

Filed : 25-Nov-2003

Attorney Docket No : 4001-0020

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 December 1, 2011

The request is **APPROVED**

The request was signed by Brian Siritzky (registration no. 37497) on behalf of all attorneys/agents associated with Customer Number 91944 . All attorneys/agents associated with Customer Number 91944 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 Customer number 86636 .

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

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	10721117
Filing Date	25-Nov-2003
First Named Inventor	Dominic Bennett
Art Unit	3682
Examiner Name	RAQUEL ALVAREZ
Attorney Docket Number	4001-0020
Title	DATABASE STRUCTURE AND FRONT END

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 91944

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

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 address of the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, associated with Customer Number: 86636

I am authorized to sign on behalf of myself and all withdrawing practitioners.

Signature	/Brian Siritzky/
Name	Brian Siritzky
Registration Number	37497

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 : March 19, 2012

In re Application of :

Dominic Bennett

Application No : 10721117

Filed : 25-Nov-2003

Attorney Docket No : 4001-0020

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed March 19, 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 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

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	10721117
Filing Date	25-Nov-2003
First Named Inventor	Dominic Bennett
Art Unit	3682
Examiner Name	RAQUEL ALVAREZ
Attorney Docket Number	4001-0020
Title	DATABASE STRUCTURE AND FRONT END

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	/David S. Lee/
Name	David S. Lee
Registration Number	38222

.UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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OFFICE OF PETITIONS

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,294,473
Issued: November 13, 2007
Application No. 10/721,404
Filed: November 25, 2003
Atty. Dkt. No.: 14539-004012

: DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d) and PETITION UNDER 37 CFR 1.183

This is a decision on the "RESPONSE TO DECISION ON PETITION UNDER 37 C.F.R. § 1.183 AND ON APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(D)," filed October 27, 2009, requesting suspension of the time limit for consideration of an application for patent term adjustment ("PTA"). The response is properly treated as a request for reconsideration of petition under 37 CFR 1.183.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See,* MPEP 1002.02.

The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,294,473 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 *Fed. Reg.* 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept any requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

The present renewed petition under 37 CFR 1.183 is granted to the extent that the decision of September 8, 2009 has been reconsidered; however, the renewed petition requesting suspension of the time limit for consideration of an application for patent term adjustment under 37 CFR 1.183 is hereby **DENIED**.

Telephone inquiries specific to this matter should be directed to Alesia M. Brown, Petitions Attorney, at (571) 272-3205.

Anthony Knight
Director
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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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

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OFFICE OF PETITIONS

In re Patent No. 7,434,216
Issue Date: October 7, 2008
Application No. 10/721,658
Filed: November 25, 2003
Attorney Docket No. 14318US02

DECISION ON PETITION

This is in response to the petition under 37 CFR 1.47(a), filed November 10, 2011.

The petition is dismissed as inappropriate.

The instant petition was filed to obtain 1.47 status for an unsigned assignment by inventors Patrick O'Neill and Brian O'Neill.

The above-identified application was filed November 25, 2003 and matured into U.S. Patent No. 7,434,216 on October 7, 2008. A review of the record shows that a fully executed declaration pursuant to 37 CFR 1.63 was filed on June 25, 2004.

The provisions of 37 CFR 1.47 are not applicable to applications which have issued as a patent. The provisions of 37 CFR 1.47 are not applicable to matters concerning unsigned assignment documents.

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 patent file will be directed solely to the correspondence address of record.

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

Charlema Grant
Attorney Advisor
Office of Petitions

Cc: Brooks, Cameron & Huebsch, PLLC
1221 Nicollet Avenue, Suite 500
Minneapolis, MN 55403

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **3-18-11**

TO SPE OF : ART UNIT **2436**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10721753** Patent No.: **7890995**

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.

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

Comments: _____

_____

_____

_____

_____

/Nasser Moazzami/ **_2436__**
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/31/11

TO SPE OF : ART UNIT 2448

SUBJECT : Request for Certificate of Correction for Appl. No 10/722,051.: 7433921

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)

Should the change(s) Be made?

RoChaun Johnson
Certificates of Correction Branch
571 272-0470

Thank You For Your Assistance

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

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

Comments: _____

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2457
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED
DEC 02 2010
OFFICE OF PETITIONS

In re Application of :
Malek :
Application No. 10/722,119 : ON APPLICATION FOR
Filed: November 25, 2003 : PATENT TERM ADJUSTMENT
Docket No. 036163-0103 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. § 1.705(b), filed September 29, 2010. Applicant submits that the patent term adjustment to be indicated on the patent is two thousand one hundred forty-eight (2148) days, not eight hundred ninety-six (896) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction partly on the basis that the Office will take in excess of three years to issue this patent.

In addition, in accordance with applicant's duty of candor and good faith before the Office, applicant discloses that applicant's calculation of the adjustment for the Office's failure to respond to the amendment filed on June 2, 2008 within 4 months differs from the Office's calculation.

To the extent that applicant 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 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 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]

To the extent that applicant otherwise requests correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **DISMISSED.**

On June 30, 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 896 days.

---

[1] 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.

In accordance with applicant's duty of candor and good faith before the Office, applicant discloses that applicant's calculation of the adjustment for the Office's failure to respond to the amendment filed on June 2, 2008 within 4 months differs from the Office's calculation. Applicant asserts that the Office should have entered a period of adjustment of 31 days, rather than 97 days, for the delay associated with responding to the June 2, 2008 amendment. On June 2, 2008 applicant filed an amendment after final. On August 26, 2008 applicant filed a notice of appeal and a request for pre-appeal conference. On September 25, 2008, the Office mailed a Notice of Panel Decision from Pre-Appeal Brief Review that stated the rejection was withdrawn and a new Office action would be mailed. On January 7, 2009, the Office mailed an Office action.

Given the decision by the panel, applicant was properly accorded 97 days for Office delay in mailing an Office action after the June 2, 2008 amendment. Since the rejection was withdrawn, the amendment filed June 2, 2008 was treated as stopping the § 704(b) clock. Pursuant to 37 CFR 1.702(a)(2), the proper calculation is from the day after four months after June 2, 2008, October 3, 2008, to the date the Office action was mailed, January 7, 2009. Therefore, the 97 day adjustment for Office delay in responding to the June 4, 2008 amendment is proper and no change in the 97 day adjustment is warranted.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 896 days -- 925 days of Office delay minus 29 days of Applicant delay.

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). This fee is required and will not be refunded.

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) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

AUG 08 2011

OFFICE OF PETITIONS

In re Patent of Malek	:	DECISION ON APPLICATION
Patent No. 7,862,586	:	FOR RECONSIDERATION OF
Issue Date: January 4, 2011	:	PATENT TERM ADJUSTMENT
Application No. 10/722,119	:	AND NOTICE OF INTENT TO
Filing Date: November 25, 2003	:	ISSUE CERTIFICATE OF
Atty Docket No. 036163-0103	:	CORRECTION

This is a decision on the petition filed on February 28, 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 two thousand thirty-two (2032) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **two thousand forty-eight (2048)** days.

A review of PTA calculations for the application has revealed errors beyond those asserted in the instant petition. On April 2, 2008, the Office mailed a final Office action. On June 2, 2008, applicant filed an amendment after final. On June 26, 2008, the Office mailed an advisory action informing applicant that the June 2, 2008 amendment did not place the application in *prima facie* condition for allowance. On August 26, 2008, applicant filed a notice of appeal and a request for pre-appeal conference. The Pre Appeal Brief Review decision of September 25, 2010 withdrew the rejection and ordered the mailing of a new office action. Therefore, the amendment filed June 2, 2008 is a sufficient reply to the final Office action under 37 CFR 1.704(b).

Accordingly, the Office was on a four month clock from October 3, 2008. The January 7, 2009 letter was a miscellaneous communication requesting the submission of a further amendment/clarification of intent not to file a further amendment. It was **not** mailed in response to the June 2, 2008 amendment. Therefore, an adjustment under 37 CFR 1.702(a)(2) of 335 days is in order, for the period beginning on October 3, 2008, the day four months after a proper reply to the final Office action was filed, and ending on September 2, 2009, the date the Office mailed a response to the June 2, 2008 amendment. Accordingly, the periods of adjustment of 97 and 105 days are being removed and a period of adjustment of 335 days is being entered.

Patentee asserts that the over 3 year period is 1471 days. The maximum B delay is 1501 days, beginning on November 26, 2006, the day after three years after the application's filing date and ending on January 4, 2011, the date of issuance of the patent. However, patentee's final calculation of B delay does not account for the filing of a Notice of Appeal on August 26, 2008, and the subsequent mailing of a non-final Office action on September 2, 2009. Patentee's 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 period consumed by appellate review is 373 days, beginning on August 26, 2008, the date of filing of the notice of appeal and ending on September 2, 2009, the subsequent date of the mailing of a non-final Office action. Thus, B delay is 1128 (1501 - 373) days.

In light of the above, the patent term adjustment is 2048 days (1058 {723 + 335} days of A delay + 1128 {1501 - 373} days of B delay - 138 days of Applicant delay.

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, Patentee is 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). This fee is required and will not be refunded. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two thousand forty-eight (2048)** days.

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

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,862,586 B2

DATED : **January 4, 2011** **DRAFT**

INVENTOR(S) : Malek

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 1951 days

Delete the phrase "by 1951days" and insert – by 2048 days--

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date	: 1/4/2011
Patent No.	: 7,676,287 B2
Serial No.	: 10/722,224
Inventor(s)	: Eryurek et al.
Issue Date	: March 9, 2010
Title	: **CONFIGURATION SYSTEM AND METHOD FOR ABNORMAL SITUATION PREVENTION IN A PROCESS PLANT**
Doc./File No.	: **30203/39746**

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 did not include a 1050/SB44 form containing instructions along with you request as required. Therefore, it is impossible to assertain what the requests may be. Please include the required 1050/SB44 form, along with a request for reconsideration as instructed in the final paragraph of this letter. No correction is in order here concerning this matter.

Please see the attached sample sheet.

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

MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO IL 60606-6357

ecw

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,676,287 B2
SERIAL NO. : 10/722,224
DATED : March 9, 2010
INVENTOR(S) : Eryurek et al.

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

Col. 31, line 15, ...?
Col. 38, line 34, ...?
Col. 40, line 65, ...?

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FISH & ASSOCIATES, PC
ROBERT D. FISH
2603 Main Street
Suite 1000
Irvine CA 92614-6232

MAILED
DEC 21 2010
OFFICE OF PETITIONS

In re Application of	:	
Adam Ewles	:	
Application No. 10/722,550	:	DECISION ON PETITION
Filed: November 28, 2003	:	
Attorney Docket No.	:	
101964.0001US1		

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed November 22, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 23, 2004.

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.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

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

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

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

This application is being referred to Technology Center AU 3612 for appropriate action by the Examiner in the normal course of business on the reply received.

JoAnne Burke
Petitions Examiner
Office of Petitions

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MAILED

DEC 15 2010

OFFICE OF PETITIONS

PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO, IL 60680

In re Application of	:	
Frank L. Rees	:	
Application No. 10/722,648	:	ON PETITION
Filed: November 25, 2003	:	
Attorney Docket No. Greene-P1-03	:	

This is a decision on the petition, filed November 1 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 **GRANTED**.

The above-identified application was held abandoned because the period for seeking court review of the decision by the Board of Patent Appeals and Interferences mailed August 31, 2010, had expired and there were no allowed claims. A Notice of Abandonment was mailed September 2, 2010.

Petitioner asserts that the Abandonment be withdrawn as it was premature since the applicant is entitled to request a rehearing of the Board of Patent Appeals and Interferences decision.

A review of the file record indicates that a Decision on Appeal was mailed August 31, 2010, which states that a two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR 1.304, or for filing a request for rehearing, as recited in 37 CFR 41.52, will run from the mail date of August 31, 2010 as shown on the PTOL-90A cover letter attached to the decision mentioned above.

Accordingly, the holding of abandonment is withdrawn as premature.

Since no fee is required for a petition under 37 CFR 1.181 to withdraw the holding of abandonment, the fee of $400 will be refunded to petitioner's deposit account as authorized.

This application is being referred to the Board of Patent Appeals and Interferences for appropriate action in the normal course of business on the reply received with petition.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO IL 60680

MAILED
MAY 3 1 2011
OFFICE OF PETITIONS

In re Application of	:	
Frank L. Rees	:	
Application No. 10/722,648	:	DECISION ON PETITION
Filed: November 25, 2003	:	TO WITHDRAW
Attorney Docket No. Greene-P1-03	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 3, 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 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.

Accordingly, the request to withdraw from record cannot be approved because no proper forwarding address was provided. The request to change the correspondence address should be that of the: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71. If an assignee has intervened in this application then a 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.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO IL 60680

MAILED

AUG 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Frank L. Rees	:	
Application No. 10/722,648	:	DECISION ON PETITION
Filed: November 25, 2003	:	TO WITHDRAW
Attorney Docket No. Greene-P1-03	:	FROM RECORD
	:	

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 15, 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. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Peter K. Trzyna, on behalf of all attorneys/agents of record. All attorneys/agents of record have been withdrawn.

The correspondence address has been changed and is copied below.

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Frank L. Rees
63 Mountain Green Circle
Candlewood, Quail Meadows Estate
Windsor Mill, MD 21244-2606

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/722,648	11/25/2003	Frank L. Rees	Greene-P1-03

CONFIRMATION NO. 7313

POWER OF ATTORNEY NOTICE

28710
PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO, IL 60680

OC000000048937737

Date Mailed: 07/25/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/15/2011.

- 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.

/kainabinet/

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

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Paper No.

JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

MAILED
SEP 10 2010
OFFICE OF PETITIONS

In re Application of	:	
Bridon et al.	:	
Application No. 10/722,733	:	DECISION ON RENEWED PETITION
Filing Date: November 25, 2003	:	UNDER 37 C.F.R. § 1.78(A)(3)
Attorney Docket No.: 11767-055-999	:	
Title: LONG LASTING SYNTHETIC GLUCAGON LIKE PEPTIDE (GLP-1)	:	

This is a decision on the renewed petition pursuant to 37 C.F.R. § 1.78(a)(3), filed August 3, 2010 to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the Supplemental Application Data Sheet (ADS) filed concurrently with this renewed petition. This is also a decision on the petition pursuant to 37 C.F.R. § 1.182, requesting expedited handling of the aforementioned petition.

The petition pursuant to 37 C.F.R. § 1.182 is **GRANTED**. Receipt of the associated $400 petition fee is acknowledged. The renewed petition pursuant to 37 C.F.R. § 1.78(a)(3) has been accorded expedited handling.

The renewed petition pursuant to 37 C.F.R. § 1.78(a)(3) is **GRANTED**.

An original petition pursuant to 37 C.F.R. § 1.182 was filed on June 30, 2008, and was dismissed via the mailing of a decision on September 2, 2008.

A renewed petition pursuant to 37 C.F.R. § 1.182 was filed on October 31, 2008, and was dismissed via the mailing of a decision on December 19, 2008.

A second renewed petition pursuant to 37 C.F.R. § 1.182 was filed on February 5, 2009, and was dismissed via the mailing of a decision on May 19, 2009.

A third renewed petition pursuant to 37 C.F.R. § 1.182 was filed on July 16, 2009, and was dismissed via the mailing of a decision on March 15, 2010.

An original petition pursuant to 37 C.F.R. § 1.78(a)(3) was filed on May 13, 2010, and was dismissed via the mailing of a decision on June 10, 2010.

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

(1) the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 C.F.R. 1.78(a)(2)(ii) and 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 decision on the original petition pursuant to 37 C.F.R. § 1.78(a)(3) acknowledged the submission of the $1,410 surcharge, and indicated that requirements (2) and (3) above have been satisfied. The original petition failed to satisfy item (1) above, as the concurrently submitted supplemental Application Data Sheet (ADS) was not executed.

With this renewed petition pursuant to 37 C.F.R. § 1.78(a)(3), Petitioner has included both the proper statement of unintentional delay and a supplemental ADS that has been fully executed.

It follows that the third requirement of Rule 1.78(a)(3) has been satisfied.

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

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

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

Petitioner has also submitted a second petition fee. Accordingly, since the $ 1,410 double payment submitted with this renewed petition on August 3, 2010 is unnecessary, it will be credited to Deposit Account No. 50-3013 in due course.

Technology Center Art Unit 1648 will be made aware of this decision, so that the Examiner may consider Applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.[1]

Chris Bottorff
Supervisor
Office of Petitions

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1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/722,733	11/25/2003	1648	385	11767-055-999	3	1

CONFIRMATION NO. 7359

JONES DAY
222 EAST 41ST ST
NEW YORK, NY 10017

CORRECTED FILING RECEIPT

OC000000043371254

Date Mailed: 09/09/2010

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)

Dominique P. Bridon, Ville Mont-Royal, CANADA;
Benoit L'Archeveque, Laval, CANADA;
Alan M. Ezrin, Moraga, CA;
Darren L. Holmes, Montreal, CANADA;
Anouk Leblanc, Montreal, CANADA;
Serge St. Pierre, Ile Bizard, CANADA;

Assignment For Published Patent Application

CONJUCHEM, INC., Montreal, CANADA

Power of Attorney: The patent practitioners associated with Customer Number 20583

Domestic Priority data as claimed by applicant

This application is a CON of 10/288,340 11/04/2002 PAT 6,887,849
which is a DIV of 09/657,332 09/07/2000 PAT 6,514,500
which claims benefit of 60/159,783 10/15/1999
This application 10/722,733
is a CIP of 09/623,548 09/05/2000 PAT 6,849,714
which is a 371 of PCT/US00/13576 05/17/2000
which claims benefit of 60/134,406 05/17/1999
and claims benefit of 60/159,783 10/15/1999
and claims benefit of 60/153,406 09/10/1999

Foreign Applications

If Required, Foreign Filing License Granted: 03/15/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/722,733**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Long lasting synthetic glucagon like peptide (GLP-1)

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Application of
Robert J. Marshall

Application No. 10722777

Filed: November 26,2003

Attorney Docket No. PRL-101

: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 17-NOV-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
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Alexandria, VA 22313-1450
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HYRA IP, PLC
11710 PLAZA AMERICA DRIVE
SUITE 2000
RESTON VA 20190

MAILED
JAN 10 2012
OFFICE OF PETITIONS

In re Application of	:	
Nikolay NIKOLAYEV	:	
Application No. 10/722,779	:	DECISION ON PETITION
Filed: November 26, 2003	:	
Attorney Docket No. 161/107	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 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 non-final Office action mailed, April 16, 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 July 17. 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $930.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action of April 16, 2008 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 3653 for appropriate action by the Examiner in the normal course of business on the reply received with the petition on December 11, 2011.

/Michelle R. Eason/
Michelle R. Eason
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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THOMPSON HINE L.L.P.
Intellectual Property Group
P.O. BOX 8801
DAYTON OH 45401-8801

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OCT 25 2010

OFFICE OF PETITIONS

In re Application of	:	
Li Ding, et al.	:	
Application No. 10/722,968	:	DECISION ON PETITION
Filed: November 26, 2003	:	
Attorney Docket No. 074822-00400	:	

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 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 on September 24, 2009. The Notice of Abandonment was mailed February 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 an amendment, (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.

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

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

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.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **ANTHONY H. HANDAL**
HANDAL & MOROFSKY LLC
501 KINGS HIGHWAY EAST
FAIRFIELD, CT 06825

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

THE FARRELL LAW FIRM, P.C.
290 Broadhollow Road
Suite 210E
Melville, NY 11747

MAILED
FEB 09 2012
OFFICE OF PETITIONS

In re Patent of Joseph P. Catabano :
Patent No. 7,293,745 :
Issue Date: November 13, 2007 :
Application No. 10/723,158 :
Filing Date: November 23, 2007 :
Attorney Docket No. 1273-2 :

Letter

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed December 22, 2011.

The $640 deficiency has been charged to Deposit Account No. 50-4053 and is hereby accepted.

The change of status to large entity has been entered and made of record.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OCT 01 2010

OFFICE OF PETITIONS

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

In re Patent No. 7,435,581	: DECISION ON REQUEST
Larry Eugene West	: FOR
Issue Date: October 14, 2008	: RECONSIDERATION OF
Application No. 10/723,168	: PATENT TERM ADJUSTMENT
Filed: November 26, 2003	: and
Atty Docket No.**BROAD.028A**	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on November 19, 2008, 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 and sixty-five (1,165) 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 five hundred sixty-one days is **GRANTED**[1].

The Office acknowledges receipt of $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

[1] The record reflects that on July 2, 2008, patentees submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) after filing a reply to a non-final Office action on May 2, 2008. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed July 2, 2008, reveals that patentees did not include a statement under 37 CFR 1.704(d). Thus, patentees failed to engage in reasonable efforts to conclude prosecution of the application. Accordingly, the period of adjustment should have been reduced by 61 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, May 3, 2008, and ending on the date that the IDS was filed, July 2, 2008. **A period of reduction of 61 days will be entered accordingly.**

of the above-identified patent is extended or adjusted by **one thousand, one hundred and sixty-five (1,165) days**

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,435,581 B2

DATED : Oct. 14, 2008

INVENTOR(S) : West

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 (570) days

Delete the phrase "by 570 days" and insert – by 1165 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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FEB 22 2012

OFFICE OF PETITIONS

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

In re Application
Tony F. Rodriguez et al.
Application No. 10/723,181
Filed: November 26, 2003
Attorney Docket No. 098888-1027

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b) filed February 10, 2012. Applicant requests that the determination of patent term adjustment be corrected from 560 to 2267 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 is being considered in light of the recent court decision in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

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

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

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for

continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

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

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) 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) 272-3212.

/Patricia Faison-Ball/

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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 KELTON
FULBRIGHT & JAWORSKI L.L.P.
SUITE 2800
2200 ROSS AVENUE
DALLAS, TX 75201

MAILED
MAY 05 2011
OFFICE OF PETITIONS

In re Patent No. 7,244,217 :
Issue Date: July 17, 2007 :
Application No. 10/723,380 : NOTICE
Filed: November 26, 2003 :
Attorney Docket No. 53358/P004US

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01/15/11

TO SPE OF : ART UNIT 2175

SUBJECT : Request for Certificate of Correction for Appl. No.: 10723824 Patent No.: 7779356

CofC mailroom date: 01/06/11

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]

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

William L. Bauman 1/20/2011
SPE AU 2175

(CASE 10/723,824)

SPE 2175 Art Unit 2175

d Trademark Office

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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

Browdy And Neimark PLLC
Patent and Trademark Causes
Suite 300
624 Ninth Street NW
Washington DC 20001-5303

In re Patent No. 7,477,405	:
Finarov et al.	: DECISION UPON REMAND AND
Issue Date: January 13, 2009	: RECONSIDERATION OF
Application No. 10/724,113	: PATENT TERM ADJUSTMENT
Filed: December 1, 2003	: AND NOTICE OF INTENT
Attorney Docket No. Finarov=3A	: TO ISSUE CERTIFICATE OF
Title: Method and System for	: CORRECTION
Measuring Patterned Structures	:

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

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by one thousand one hundred and thirty-one (1131) 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 thousand one hundred and thirty-one (1131) 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 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 : 7,477,405 B2

DATED : **January 13, 2009** **DRAFT**

INVENTOR(S) : Finarov 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 472 days

Delete the phrase "by 472 days" and insert – by 1131 days--

Day : Wednesday

PALM INTRANET

Date: 8/18/2010
Time: 10:57:39

PTA Calculations for Application: 10/724113			
Application Filing Date:	12/01/2003	PTO Delay (PTO):	774
Issue Date of Patent:	01/13/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	302
Post-Issue Petitions:	0	Total PTA (days):	1131
PTO Delay Adjustment:	659		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
67	08/18/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	659		
61.5	12/22/2008	PTA 36 MONTHS	261		
61	01/13/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
60	12/15/2008	EXPORT TO FINAL DATA CAPTURE			
59	12/10/2008	DISPATCH TO FDC			
58	12/10/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
57	12/08/2008	ISSUE FEE PAYMENT VERIFIED			
56	12/08/2008	ISSUE FEE PAYMENT RECEIVED			
55	10/09/2008	FINISHED INITIAL DATA CAPTURE			
54	09/12/2008	EXPORT TO INITIAL DATA CAPTURE			
53	09/09/2008	MAIL NOTICE OF ALLOWANCE			
52	09/08/2008	ISSUE REVISION COMPLETED			
51	09/08/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
50	09/08/2008	DOCUMENT VERIFICATION			
49	09/02/2008	NOTICE OF ALLOWABILITY			
41	08/29/2008	DATE FORWARDED TO EXAMINER			
40	07/24/2008	RESPONSE AFTER NON-FINAL ACTION		87	38
39	07/24/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	01/28/2008	MAIL NON-FINAL REJECTION			
37	01/22/2008	NON-FINAL REJECTION			
34	10/31/2007	DATE FORWARDED TO EXAMINER			
33	10/25/2007	RESPONSE AFTER NON-FINAL ACTION		61	31
32	10/25/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
31	05/25/2007	MAIL NON-FINAL REJECTION	57		22

30	05/24/2007	MAIL-PETITION DECISION - GRANTED			
28	04/02/2007	NON-FINAL REJECTION			
27	12/01/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	03/16/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
25	03/29/2007	DATE FORWARDED TO EXAMINER			
24	01/04/2007	SUPPLEMENTAL RESPONSE		36	22
23	03/29/2007	DATE FORWARDED TO EXAMINER			
22	11/29/2006	RESPONSE TO ELECTION / RESTRICTION FILED		118	17
21	11/29/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	02/12/2007	CASE DOCKETED TO EXAMINER IN GAU			
19	01/04/2007	PETITION ENTERED			
17	05/03/2006	MAIL RESTRICTION REQUIREMENT	456		-1
16	05/01/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
15	03/16/2004	REFERENCE CAPTURE ON IDS			
14.7	03/16/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	03/16/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	04/16/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	04/16/2004	CASE DOCKETED TO EXAMINER IN GAU			
11.7	12/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	12/01/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	02/27/2004	APPLICATION RETURN FROM OIPE			
9	03/01/2004	APPLICATION IS NOW COMPLETE			
8	03/01/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
7	02/27/2004	APPLICATION RETURN TO OIPE			
6	02/27/2004	APPLICATION DISPATCHED FROM OIPE			
5	03/01/2004	APPLICATION IS NOW COMPLETE			
4	02/10/2004	CLEARED BY OIPE CSR			
3	02/10/2004	CASE CLASSIFIED BY OIPE			
2	01/19/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/01/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110531

DATE : February 01, 2011

TO SPE OF : ART UNIT 2614

SUBJECT : Request for Certificate of Correction on Patent No.: 7835509

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:

/CURTIS KUNTZ/
Supervisory Patent Examiner.Art Unit 2614

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/18/2011

TO SPE OF : ART UNIT 2832 Enad Elvin (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/724336 Patent No.: 7196604

CofC mailroom date: 11/18/2010

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

H. Riley
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 Petition to Delete Inventors under 37 C.F.R. 1.148(b)(1) filed 08/16/2006 states that Mark A. Howard, Richard A. Doyle, Ross P. Jones, David A. James, Darran Kreit, and Bruce MacCaulay are to be deleted as inventors in the present application. Therefore, David A. James should be removed from the list of inventors leaving Colin Stuart Sills as the sole inventor. /BR/

/Elvin Enad/ SPE AU2832

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 9, 2012

TO SPE OF : ART UNIT 2614 SPE Curtis Kuntz.

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/724,406 Patent No.: 8,059,796 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 Building
2800 South Randolph Street
Arlington, VA 22206

Should the the dependencies of claims 46, 53 and 60 in the printed patent be changed to read as requested by applicant?
See COCIN dated 12-12-2011

Antonio Johnson

Certificates of Correction Branch
(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____ _____ **SPE /Curtis Kuntz/** **Art Unit 2614**

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. 7164368
Issue Date: January 16,2007
Application No. 10724550
Filed: November 28,2003
Attorney Docket No.

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

This is a decision on the electronic petition, filed February 15,2012 ,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 February 15,2012 .
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.

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7164368	2007-01-16	10724550	2003-11-28	

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.

Sole Patentee			
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	/ajireland/	Date (YYYY-MM-DD)	2012-02-15
Name	Anthony John Ireland		

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.

7

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **11-29-10**

TO SPE OF : ART UNIT **2121**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10724623** Patent No.: **7787971**

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.

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

Comments: _____

_____

_____

_____

_____

/Albert DeCady/ **2121**
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

MAILED
Paper No.
DEC 20 2010
OFFICE OF PETITIONS

ALFRED J MANGELS
4729 CORNELL ROAD
CINCINNATI OH 45241-2433

Patent No. 7,117,643 :
Lee Brown :
Issue Date: October 10, 2006 :
Application No. 10/724,667 : DECISION ON PETITION
Filed: December 1, 2003 :
Atty Docket No. 1614 :

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c)) filed October 20, 2010 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued October 10, 2006. The grace period for paying the 3-½ year maintenance fee provided in 37 CFR 1.362(e) expired at midnight on October 10, 2010, with no payment received.

The petition was timely filed within twenty-four months after the expiration of the six-month grace period. Further, as required, petitioner submitted with the petition the required maintenance fee, the surcharge for accepting an unintentionally delayed maintenance fee after expiration, and a statement that the delay in payment of the maintenance fee was unintentional. These fees were accepted at the reduced small entity rate, as the fees were accompanied by petitioner's assertion of having made a determination of continued entitlement to pay small entity fees, pursuant to new 37 CFR 1.27(g)(1), effective September 8, 2000.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED

OCT 26 2010

OFFICE OF PETITIONS

In re Application of
Jean-Paul Accarie et al.
Application No. 10/724,701
Filed: December 2, 2003
Attorney Docket Number: 02997.002501

: DECISION GRANTING PETITION

This is a **CORRECTED** decision on the petition to withdraw the holding of abandonment, filed May 5, 2009, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513. The decision on petition dated May 22, 2009 is hereby vacated.[1] In this regard, prosecution subsequent to the petition decision of May 22, 2009 is also vacated.

The petition is **GRANTED**.

This application became abandoned for failure to timely respond to an Final Office Action mailed April 30, 2008 which set a three month period for response. No response having been filed or extension of time requested, this application became abandoned July 31, 2008. Accordingly, a Notice of Abandonment was mailed December 22, 2008.

The file record discloses that the Office Action was mailed April 30, 2008 to the address of record, the same address to which the Notice of Abandonment was mailed and received. However, petitioner contends that the Office Action was not received and that the Office Action was returned to the USPTO. Petitioner has also submitted copies of their docket to substantiate their claim.

A review of the USPTO files reveal that the Office Action was in fact returned to the USPTO by the United States Postal Service on May 1, 2008 and no apparent reason can be determined since it appears that the address of record was placed on the correspondence. In view of the facts set forth in the petition, it is concluded that the Office Action was never received.

[1]The decision dated May 22, 2009 incorrectly indicated that a response to the Final Office Action was filed May 5, 2009. A review of the record does not reveal that a response was filed with the Petition filed May 5, 2009.

This application is being forwarded to the Technology Center 2445 for a re-mailing of the Final Office Action originally dated April 30, 2008 and for a restarting of the period for response.

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

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/27/11

TO SPE OF : ART UNIT 2445

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/724,843 Patent No.: 8024487

CofC mailroom date: 10/17/11

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

RoChaun Hardwick
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: _____

/Andrew Caldwell/ — **SPE**

2445 — **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

ALFRED J MANGELS
4729 CORNELL ROAD
CINCINNATI OH 45241-2433

MAILED
DEC 20 2010
OFFICE OF PETITIONS

In re Patent No. 7,117,642	:	
Issue Date: October 10, 2006	:	
Application No. 10/724,964	:	DECISION ON PETITION
Filed: December 01, 2003	:	
Attorney Docket No. 1613	:	

This is a decision on the petition under 37 CFR 1.378(c), filed October 20, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on October 10, 2010 for failure to pay the three (3) and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

The patent file is being forwarded to Files Repository.

Michelle R. Eason
Paralegal Specialist
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

In re Patent No. 7225935
Issue Date: June 5,2007
Application No. 10725111
Filed: December 1,2003
Attorney Docket No. W&B-ES-2056

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

This is a decision on the electronic petition, filed July 25,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of July 25,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7225935	2007-06-05	10725111	2003-12-01	

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	/Laurence A. Greenberg/	Date (YYYY-MM-DD)	2011-07-25
Name	Laurence A. Greenberg	Registration Number	29308

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.

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7121061	2006-10-17	10725151	2003-12-01	JPJ

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	/David A Kiewit, Reg. 34640/	Date (YYYY-MM-DD)	2011-01-22
Name	David Kiewit	Registration Number	34640

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7121061
Issue Date: October 17,2006
Application No. 10725151
Filed: December 1,2003
Attorney Docket No. JPJ

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

This is a decision on the electronic petition, filed January 22,2011 ,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 January 22,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OGILVY RENAULT LLP
1 PLACE VILLE MARIE
SUITE 2500
MONTREAL QC HB3 1R1 CA CANADA
Pittsburgh, PA. 15219

MAILED
AUG 16 2010
OFFICE OF PETITIONS

In re Application of	:
David Robert Cameron ROLSTON	:
Application No. 10/725,566	: DECISION ON PETITION
Filed: December 3, 2003	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 16005-3US-1	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed November 16, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

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

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

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

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the

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

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

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-0602.

Thurman K. Page
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
10/725,566	12/03/2003	3729	685	16005-3US-1	20	1

CONFIRMATION NO. 3996

CORRECTED FILING RECEIPT

OC000000043044601

20988
OGILVY RENAULT LLP
1, Place Ville Marie
SUITE 2500
MONTREAL, QC H3B 1R1
CANADA

Date Mailed: 08/13/2010

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)

David Robert Cameron Rolston, Beaconsfield, CANADA;
Tomasz Maj, Montreal, CANADA;

Power of Attorney: The patent practitioners associated with Customer Number 20988

Domestic Priority data as claimed by applicant

This application is a CIP of 10/625,906 07/24/2003 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 03/16/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/725,566**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

METHOD OF MANUFACTURING AN OPTOELTRONIC PACKAGE

Preliminary Class

029

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
10/725,806	12/02/2003	Mary Darlene Temple	671.001	3327

7590 11/18/2010

Mary Darlene Temple
8325 Hilltop Circle Drive
Imperial, PA 15126

EXAMINER
ACKUN, JACOB K

ART UNIT	PAPER NUMBER
3728	

MAIL DATE	DELIVERY MODE
11/18/2010	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

November 17, 2010

Mary Darlene Temple
8325 Hilltop Circle Drive
Imperial PA 15126

In re Application of	:	
Mary Darlene Temple	:	**DECISION ON PETITION**
Application No. 10725806	:	
Filed: 12/2/2003	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **671.001**	:	***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) December 2, 2003.

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

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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APR 12 2011

OFFICE OF PETITIONS

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

In re Patent No. 7,084,499	:	
Issue Date: August 01, 2006	:	
Application No. 10/725,865	:	DECISION ON PETITION
Filed: December 01, 2003	:	
Attorney Docket No. **SIPT122078**	:	

This is a decision on the petition under 37 CFR 1.378(c), filed September 02, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

This patent expired at midnight on August 01, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The petition indicates the maintenance fee and surcharge due to be charged to the deposit account 50-4102. However, Office records do not list Yu-Nung Shen who is the inventor, as being an authorized

user on deposit account 50-4102. Therefore, as the payments cannot be to from this deposit account at this time the instant petition stands dismissed. Any renewed petition must include a fee payment of $2530 to cover the maintenance fee of $490, surcharge of $1640 for unintentionally delayed payment and $400 petition fee for a renewed petition.

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 fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

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

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

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

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

Telephone inquiries should be directed to Tredelle Jackson at 571-272-2783.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **YU-NUNG SHEN**
4F, NO. 57, XING-ZHONG ROAD
NEI-HU DISTRICT
TAIPI CITY
TAIWAN

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
JUN 09 2011
OFFICE OF PETITIONS

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

In re Patent No. 7,084,499	:	
Issue Date: August 01, 2006	:	
Application No. 10/725,865	:	DECISION ON PETITION
Filed: December 01, 2003	:	
Attorney Docket No. **SIPT122078**	:	

This is a decision on the renewed petition under 37 CFR 1.378(c), filed May 16, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on August 01, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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 fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address 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 Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **JOSEPH HOUSTON**
HOUSTON ELISEEVA, LLP
420 BEDFORD STREET, SUITE 155
LEXINGTON MA 02420

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 7160910
Issue Date: January 9,2007
Application No. 10725935
Filed: December 3,2003
Attorney Docket No. SEL-001us

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

This is a decision on the electronic petition, filed March 11,2011 ,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 11,2011 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7160910	2007-01-09	10725935	2003-12-03	AES-001US

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	/Wayne A. Keown/	Date (YYYY-MM-DD)	2011-03-11
Name	Wayne A. Keown	Registration Number	33923

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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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

MAILED

JAN 31 2011

OFFICE OF PETITIONS

In re Patent No. 7,276,371
Issued: October 2, 2007
Application No. 10/725,952
Filed: December 1, 2003
Attorney Docket No.: 9442-41CT2

: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" and the "REQUEST FOR SUSPENSION OF 37 C.F.R. § 1.705(d) UNDER 37 C.F.R. § 1.183", both filed March 26, 2010, requesting suspension of the time limit for consideration of an application for patent term adjustment ("PTA").

This petition is hereby **DISMISSED**.

The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,276,371 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 *Fed. Reg.* 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept <u>any</u> requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that

Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

Subsequently, and prior to a decision on the petitions filed March 26, 2010, applicants filed a "REQUEST FOR ENTRY OF CERTIFICATE OF CORRECTION UNDER 35 U.S.C §254 AND 37 C.F.R. §1.322" to correct the patent term. The request filed April 2, 2010 cannot be construed as a petition under 37 CFR 1.705(d) and the instant petition requesting a corrected patent term adjustment is not timely filed. As such, the petition is dismissed and the certificate of correction which issued May 18, 2010 was issued in error. In view thereof, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 467 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 § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred sixty-seven (467)** days and supersedes all previously issued certificates of correction.

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

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,276,371 B2

DATED : October 2, 2007

INVENTOR(S) : William Bachovchin

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 (772) days

Delete the phrase "by 772 days" and insert – by 467 days--

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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York, NY 10036

MAILED
MAR 02 2012
OFFICE OF PETITIONS

In re Patent of Napadensky et al.	:	
Patent No. 7,300,619	:	
Issue Date: November 27, 2007	:	Letter
Application No. 10/725,995	:	
Filing Date: December 3, 2003	:	
Attorney Docket No. P3099-US3	:	

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed January 23, 2012.

The deficiency payment of $640 is hereby accepted.

The change of status to large entity has been entered and made of record.

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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IBM CORPORATION, T.J. WATSON RESEARCH CENTER
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Liu et al.	:	
Application No. 10/726,002	:	DECISION ON PETITION
Filed: December 1, 2003	:	
Attorney Docket No. YOR920030522US1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 9, 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 December 21, 2009, as required by the Notice of Allowance and Fee(s) Due mailed September 21, 2009. Accordingly, the application became abandoned on December 22, 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 $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

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

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571)272-6059.

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

Carl Friedman
Petitions Examiner
Office of Petitions

cc: LOUIS J. PERCELLO
IBM CORPORATION, INTELLECTUAL PROPERTY LAW
T.J. WATSON RESEARCH CENTER
1101 KITCHAWAN ROAD
YORKTOWN HEIGHTS, NY 10598

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6846088	2005-01-25	10726098	2003-12-01	42P17548D

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	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-28
Name	Kendal M. Sheets	Registration Number	47077

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. 6846088
Issue Date: January 25,2005
Application No. 10726098
Filed: December 1,2003
Attorney Docket No. 42P17548D

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

This is a decision on the electronic petition, filed September 30,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 30,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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DEC 20 2010
OFFICE OF PETITIONS

Joseph H. Martin
3235 Executive Ridge
Vista CA 92081-8527

In re Application of :
Joseph H. Martin :
Application No. 10/726,223 : ON PETITION
Filed: December 1, 2003 :
Attorney Docket No.

This is a decision on the petition under 37 CFR 1.137(a), filed September 27, 2010, to revive the above-identified application.

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

The above-identified application became abandoned for failure to reply to the restriction/election requirement mailed December 22, 2008, which set a shortened period for reply of one (1) month from its mailing date. No response was received within the allowable period, and the application became abandoned on January 23, 2009. A Notice of Abandonment was mailed September 4, 2009.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

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

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical

[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

---

[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts that the negligence of the attorney of record led to the abandonment of the application.

With regard to item (1), petitioner is required to file a response to the election/restriction requirement mailed December 22, 2008. A copy of the Office action is enclosed for petitioner's convenience. The response must accompany any renewed petitioner filed or a petition under 37 CFR 1.137(a).

With regard to item (3), the unavoidable standard requires that petitioner establish, by evidentiary showing, all relevant persons acted reasonably and prudently relative to the prosecution of the application and despite their actions the application was unavoidably abandoned. At the time of the abandonment of the application, power of attorney was granted to Donald W. Meeker and the petition makes clear that it was Mr. Meeker's responsibility to file a response to December 22, 2008, Office action. Accordingly, it is largely Mr. Meeker's actions or inactions that must be examined relative to whether the delay in responding to the Office action was unavoidable. The renewed petition should be accompanied by statements or other documentary evidence that affirmatively establishes the cause of the abandonment of the application and establishes that circumstances resulting in the abandonment of the application were unavoidable. These statement and/or evidence would presumably focus on the activities of Mr. Meeker and should include a statement from Mr. Meeker himself as to his understanding of the reasons for the abandonment of the application.

Petitioner is further advised that the delay of petitioner is only relevant in establishing that the entire delay—from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a)—was unavoidable. More specifically, petitioner's actions only become relevant from June 28, 2010, forward when petitioner revoked the power of attorney to Mr. Meeker.

It is noted that the courts hesitate to punish a client for its lawyer's gross negligence, especially when the lawyer affirmatively misled the client, but "...if the client freely chooses counsel, it should be bound by counsel's actions[10]. The record indicates that petitioner freely chose to rely on Mr. Meeker entrusting him with handling the prosecution of the application. Petitioner's reliance on Mr. Meeker was clearly misplaced and unfortunate, but petitioner has not established that Mr. Meeker's alleged betrayal of petitioner's trust is the sole reason for the entire period of the alleged unavoidable delay.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1,620.00 for a large entity and $810.00 for a verified small entity), and a statement that the **entire** delay in filing the required

[10] Inryco.Inc. v. Metropolitan Engineering Co., Inc., 708 F.2d 1225, 1233 (7th Cir. 1983). See also, Wei v. State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985); LeBlanc v. I.N.S., 715 F.2d 685, 694 (1st Cir. 1983).

reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosures:

Copy—Restriction/election requirement mailed December 22, 2008
Form PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MAILED
APR 19 2011
OFFICE OF PETITIONS

Joseph H. Martin
3235 Executive Ridge
Vista CA 92081-8527

In re Application of :
Joseph H. Martin :
Application No. 10/726,223 : ON PETITION
Filed: December 1, 2003 :
Attorney Docket No.

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

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

The above-identified application became abandoned for failure to reply to the restriction/election requirement mailed December 22, 2008, which set a shortened period for reply of one (1) month from its mailing date. No response was received within the allowable period, and the application became abandoned on January 23, 2009. A Notice of Abandonment was mailed September 4, 2009. A petition under 37 CFR 1.137(a) was filed on September 27, 2010, and dismissed by a decision mailed December 20, 2010.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

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

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is

[1]As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts only the actions of Mr. Joseph Martin, the sole inventor, should be considered when determining whether the delay was "unavoidable". Petitioner further states that petitioner's former patent agent, Donald Meeker, was not freely chosen, but referred to petitioner by the USPTO.

With regard to item (1), the paper filed September 27, 2010, is noted, however; the paper would likely not be considered a proper response to the restriction/election requirement. Further to this point, it is noted that the restriction/election requirement mailed December 22, 2008, states, in pertinent part, that:

> [a]pplicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examiner even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added.

Excerpt taken from "Office Action Summary—Elections/Restrictions", mailed December 22, 2008, pg. 3.

The paper filed September 27, 2010, does not appear to be fully responsive to the election/restriction requirement in that its does not identify the claims encompassing the elected species. Accordingly, the renewed petition or a petition under 37 CFR 1.137(b), must be accompanied by a proper response to the restriction/election requirement.

With regard to item (3), petitioner surmises that only the actions or inactions of Mr. Martin need be examined to determine if the delay in responding to the election/restriction requirement was unavoidable. Petitioner's argument is unpersuasive. It is again noted that the unavoidable standard requires that petitioner establish, by evidentiary showing, that all relevant persons acted reasonably and prudently relative to the prosecution of the application and despite their actions the application was unavoidably abandoned. At the time of the abandonment of the application, power of attorney was granted to Donald W. Meeker and the petition of September 27, 2010, made clear that it was Mr. Meeker's responsibility to file a response to December 22, 2008, Office action. Accordingly, it is largely Mr. Meeker's actions or inactions that must be examined relative to whether the delay in responding to the Office action was unavoidable. It is noted that petitioner states that petitioner made efforts to revoke the power of attorney granted to Mr. Meeker. While this certainly may be the case, the record only reflects that the restriction requirement was mailed December 22, 2008, and that the paper revoking the power of attorney to Mr. Meeker was not filed until June 28, 2010. The actions of Mr. Meeker remain relevant because he appears to have had the authority to respond to the restriction/election requirement up until June 2010. Petitioner is further advised that the delay of petitioner is only relevant in establishing that the entire delay—from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a)—was unavoidable. More specifically, petitioner's actions alone

become relevant from June 28, 2010, forward when petitioner revoked the power of attorney to Mr. Meeker. The renewed petition should be accompanied by statements or other documentary evidence that affirmatively establishes the cause of the abandonment of the application and establishes that circumstances resulting in the abandonment of the application were unavoidable. These statements and/or evidence must focus on the activities of Mr. Meeker and should include a statement from Mr. Meeker himself as to his understanding of the reasons for the abandonment of the application.

It is further noted that the sole inventor usually retains the authority to review the prosecution of the patent application, make filings, and make inquiries into the status of the application, notwithstanding that a power of attorney has been granted in the application. While petitioner maintains that Mr. Martin's delay was unavoidable, petitioner has not established that Mr. Martin took any steps to intervene in the application's prosecution when Mr. Martin discovered that something may have been amiss in Mr. Meeker's prosecution of the application. Even were Mr. Martin's actions or inactions alone to be considered in disposition of the petition, petitioner has not established that Mr. Martin's entire delay—from the due date for the reply to the restriction/election requirement (January 22, 2009) until the filing of a grantable petition—was unavoidable.

Petitioner's argument that Mr. Meeker was not a freely chosen representative of Mr. Martin because Mr. Meeker was chosen from a list of registered agents provided by the Office is unavailing. It is noted that 37 CFR 1.31 provides that:

> [a]n applicant for patent may file and prosecute his or her own case, or he or she may give power of attorney so as to be represented by one or more patent practitioners or joint inventors. The United States Patent and Trademark Office cannot aid in the selection of a patent practitioner.

The above-cited section of the United States Code of Federal Regulations makes clear that the Office in no way endorses any patent practitioner. The list of registered agents provided by the Office should not be interpreted as an endorsement of the practitioners and is only a notification that the named persons have fulfilled the requirements registration with the Office as set forth in 37 CFR 11.6 and 37 CFR 11.7. Applicants are not required to choose any person from this list in order to file and prosecute a patent application. It is, therefore, the responsibility of every applicant that chooses to use the services of a registered patent agent to use due diligence in making this selection and continuing the services of the registered agent; the USPTO does not make any recommendation either matter. It is regrettable when services of the freely chosen registered practitioner do not satisfy the applicant. Notwithstanding, said failure is not imputed to the Office and does not relieve petitioner of the burden levied by 37 CFR 1.137(a) of establishing that the entire delay of all relevant parties, including the attorney to whom power of attorney was given, was unavoidable.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1,620.00 for a large entity and $810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date

for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

Questions regarding the restriction/election requirement and a proper response thereto should be directed to the examiner assigned to the application. Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 09 2011

OFFICE OF PETITIONS

Joseph H. Martin
3235 Executive Ridge
Vista CA 92081-8527

In re Application of :
Joseph H. Martin :
Application No. 10/726,223 : ON PETITION
Filed: December 1, 2003 :
Attorney Docket No.

This is a decision on the petition under 37 CFR 1.137(b), filed May 23, 2011 to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply to the restriction/election requirement mailed December 22, 2008, which set a shortened period for reply of one (1) month from its mailing date. No response was received within the allowable period, and the application became abandoned on January 23, 2009. A Notice of Abandonment was mailed September 4, 2009.

The election filed May 23, 2011, is noted.

The application is being forwarded to Technology Center 3700, GAU 3726 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

Commissioner for Patents
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P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

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DEC 0 1 2010

OFFICE OF PETITIONS

In re Application of	:	
POU, Robin et al.	:	
Application No. 10/726,284	:	DECISION ON PETITION
Filed: December 02, 2003	:	TO WITHDRAW
Attorney Docket No. **14706-002001**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 09, 2010.

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 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(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.

Therefore, as there is currently no statement under 37 CFR 3.73(b) of record in the instant application, the Office cannot change the correspondence address to the address on the Request for Withdrawal.

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

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **FIRST SOUTHERN NATIONAL BANK**
P.O. BOX 328
STANFORD, KY 40484

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
AUG 27 2010
OFFICE OF PETITIONS

In re Patent No. 7,641,659	:	DECISION ON REQUEST FOR
Emstad, et al.	:	RECONSIDERATION OF
Issue Date: January 5, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/726,329	:	
Filed: December 1, 2003	:	
Attorney Docket No. 1292.1228101	:	

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 one thousand, six hundred and eighty-six (1,686) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On January 5, 2010, the above-identified application matured into U.S. Patent No. 7,641,659, with a revised patent term of 1,039 days. An additional adjustment was entered pursuant to a decision mailed February 18, 2010, increasing the patent term adjustment to 1,576 days. By the instant petition, patentees assert that the patent term should be adjusted by 110 days pursuant to 37 CFR 1.702(b) and 37 CFR 1.703(b) and other considerations[1].

It is noted that patentees failed to account for the filing of the notice of appeal on November 7, 2008. The Office reminds patentees that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 130 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, November 7, 2008, and ending on the day the non-final Office action was filed, March 16, 2009. Thus, the B delay is 1,001 days (1,131 – 130). Accordingly, the patent term adjustment is 1,576 days (726 days of A delay + 1,001 days of B delay –59 days of overlap - 92 days of applicant delay). In view thereof, the patent term adjustment of 1,576 days indicated in the patent is correct.

[1] It is noted that patentees argue that the period of delay under 37 CFR 1.702(a)(2) for the mailing of a non-final Office action on March 17, 2009, is 10 days. The period of adjustment for the mailing of the non-final Office action on March 17, 2009, is 59 days with said period beginning January 18, 2008, and ending on March 17, 2009.

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

COMMISSIONER FOR PATENTS
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Paper No.

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
MAR 29 2011
OFFICE OF PETITIONS

In re Patent No. 7,523,096	:	
Badros et al.	:	DECISION ON RENEWED
Application No. 10/726,410	:	REQUEST FOR
Issue Date: April 21, 2009	:	RECONSIDERATION OF
Filed: December 3, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No.: 16113-1100001	:	UNDER 37 CFR § 1.705(d)
	:	and
	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) and NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," filed on October 22, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from four hundred and seventy-four (474) days to five hundred and seventy-four (574) days.

The request for reconsideration of patent term adjustment is **GRANTED TO THE EXTENT INDICATED HEREIN**.

Patentee is given **THIRTY (30) DAYS OR ONE (1) MONTH**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of 573 days.

On April 21, 2009, the application matured into U.S. Patent No. 7,523,096, with a revised patent term adjustment of 408 days.

On June 16, 2009, Patentees timely submitted a request for reconsideration of patent term adjustment (original petition)

within two months of the issue date of the patent, along with the associated fee. A decision on the original petition was mailed on September 23, 2009, which indicated that the original petition was granted to the extent that the patent term would be adjusted to 474 days.

This renewed petition was filed on October 22, 2009. Despite the fact that this renewed petition was filed more than 180 days since the issuance of the patent, this submission is timely as the request for reconsideration of the decision on the original petition was filed within two months of the date of the decision on the original petition. See 1351 Off. Gaz. Pat. Office 204 (February 23, 2010).

Patentee has indicated that his patent is not subject to a terminal disclaimer.[1]

The period of examination delay of 562 days is not in dispute.[2]

The period of applicant delay of 88 days is not in dispute.[3]

The period of zero overlap is not in dispute.[4]

The fact that a Request for Continued Examination (RCE) was filed on March 13, 2007 is not in dispute.[5]

The sole item in dispute is the period of B-delay. As the period from the filing date of the RCE to the issue date of the patent is not included in the "B" delay period, the over three year period begins on December 4, 2006 and ends on March 12, 2007, the day before the first RCE was filed, which amounts to 99 (not 100)[6] days. See U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 573, not 574 days.

It follows that the patent term adjustment is increased by 573 (562 examination delay - 88 applicant delay + 99 "B-delay") days, not 574 days.

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[1] Original petition, page 4.
[2] Id. at 2.
[3] Id. at 4.
[4] Id. at 3.
[5] Id.
[6] Original petition, pages 3 and 4.

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 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 **five hundred and seventy-three (573) 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 : 7,523,096 B2

DATED : April 21, 2009 **DRAFT**

INVENTOR(S) : Badros 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 474 days

Delete the phrase "by 474 days" and insert – by 573 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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In re Patent No. 7125652
Issue Date: October 24,2006
Application No. 10726413
Filed: December 3,2003
Attorney Docket No. H1641

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

This is a decision on the electronic petition, filed December 22,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 22,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7125652	2006-10-24	10726413	2003-12-03	2162.194100/H1641

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.

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Jesse Abzug/	Date (YYYY-MM-DD)	2010-12-22
Name	Jesse Abzug		
Enter Reel and Frame Number		Remove	
Reel Number	023119	Frame Number	0083
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 08/03/2010

Applicant	: Masood Murtuza	: DECISION ON REQUEST FOR
Patent Number	: 7642649	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/726,474	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/01/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
DEC 06 2010
OFFICE OF PETITIONS

IGOR K. KOTLIAR
P.O. BOX 2021
NEW YORK NY 10159-2021

In re Application of
Igor Kotliar
Application No. 10/726,737
Filed: December 3, 2003
For: HYPOXIC AIRCRAFT FIRE PREVENTION AND SUPPRESSION SYSTEM WITH AUTOMATIC EMERGENCY OXYGEN DELIVERY SYSTEM

ON PETITION

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 **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 petition has **not** been reviewed on the merits because the petition has not been properly signed.

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.

The petition has been signed by Brian Oestrike, an unknown party. To the extent petitioner contends to be the assignee of the instant application, petitioner must meet the requirements of 37 CFR 3.71 and 37 CFR 3.73(b).

It is noted the address presented on the petition differs from the correspondence address of record. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

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

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

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

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

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: Brian Oestrike
50 Lexington Ave.
Suite 24A
New York, NY 10010

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

IGOR K. KOTLIAR
P.O. BOX 2021
NEW YORK NY 10159-2021

MAILED

JAN 24 2011

OFFICE OF PETITIONS

In re Application of
Kotliar
Application No. 10/726,737
Filed: December 3, 2003
Attorney Docket No.IKK-19

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 14, 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 June 25, 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 September 26, 2010. A Notice of Abandonment was mailed on October 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 payment of the $755 issue and publication fees 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) 272-3215.

This application is being referred to the Office of Data Management for further processing.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Christopher C. Winslade
McAndrews, Held & Malloy
Suite 3400
500 W. Madison Street
Chicago IL 60661

MAILED

NOV 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Besen et al.	:	ON APPLICATION FOR
Application No. 10/726814	:	RECONSIDERATION OF
Filing or 371(c) Date: 12/03/2003	:	PATENT TERM ADJUSTMENT
Attorney Docket Number:	:	
15815US02	:	

This is a decision on the "APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDR 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)," filed June 14, 2010. Applicants petition for reconsideration of the patent term adjustment calculation to 1853 days, not 963 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction based upon (1) on the basis that the Office will take in excess of three years to issue this patent, and (2) an assertion that the Office erred in calculating a delay of 1 day. The petition is properly treated under37 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 failing to calculate a delay of 1 day is **DISMISSED**.

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), and as it relates to the Office's failure to calculate a delay of 18 days under 37 CFR 1.704(c)(10), is **DISMISSED as PREMATURE**.

On March 16, 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 963 days.

On June 14, 2010, applicant timely submitted the instant application for patent term adjustment[1]. Applicants request that the Determination of Patent Term Adjustment be corrected from 963 days, as indicated on the Determination of PTA mailed March 16, 2010, to an adjustment of 1853 days. Applicants aver that the Office may have erred in failing to calculate an adjustment 1 day.

Applicant requests that the Office adjust the patent term adjustment ("PTA") pursuant to 37 CFR 1.704(b) to 0 days. Applicant believes that it should not have been assessed one (1) day of delay relative to the filing of the reply to a non-final Office action, three months and one (1) day after the mail date of the non-final Office action. Applicant acknowledges that the date three months after the mailing of the non-final Office action is May 17, 2009, and that the reply to the non-final Office action was filed on May 18, 2009. However, Applicant avers that the reply was timely because the time period for reply ended on a Saturday, Sunday or Federal Holiday, in which instance, Applicant provides, the reply is timely if filed on the next succeeding business day. Applicant cites to 37 CFR §§ 1.6(a)(1) and 1.7, and provides in relevant part, that when the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on a Saturday, Sunday or on a Federal Holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday or a Federal Holiday.

Regarding the delay of one (1) day attributed to Applicant under 37 CFR 1.704(b), for filing the reply to the non-final Office action on May 18, 2009, Patentee' attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. That is, while the date indicated on any certificate of mailing or transmission under § 1.8 will continue to be taken into account in determining timeliness, <u>the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation</u>. Applicant may wish to consider the use of the "Express Mail Post Office to Addressee" service of the United States Postal Service (§ 1.10) or facsimile transmission (§ 1.6(d)) for replies to be accorded the earliest possible <u>filing date</u> for patent term adjustment calculations. (Emphasis supplied). *See also*, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*; *Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

In accordance with 37 CFR 1.703(f), the Office properly used May 18, 2009, the filing date of the reply to the non-final Office action, in calculating the patent term adjustment. Accordingly, Patentees' argument on request for reconsideration of patent term adjustment is not found persuasive.

It is also noted that the petition fails to account for reductions of 27 days in connection with the filing of the Notice of Appeal on September 24, 2008, in reply to the final Office action, mailed May 28, 2008, and of 30 days in connection with the filing of the Amendment on December 4, 2009, in reply to the non-final Office action, mailed August 4, 2009. Pursuant to 37 CFR 1.704(b), reductions of 27 days, beginning on the day after the date that is three months after the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request, August 29, 2008, and ending on the date the reply was filed,

[1] PALM records show that the Issue Fee payment was received in the Office on June 16, 2010.

September 24, 2008, and of 30 days, beginning on the day after the date that is three months after the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request, November 5, 2009, and ending on the date the reply was filed, December 4, 2009, were properly assessed to Applicant.

As to the Office's failure to issue the patent within 3 years of the filing date, and as to the Office's failure to assess a reduction of 18 days in connection with the Information Disclosure Statement ("IDS"), filed May 24, 2010, 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[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,

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[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.

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 Woods at (571) 272-3232.

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/6/2011

TO SPE OF : ART UNIT 3769 YAO Sam chuan (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/727144 Patent No.: 8002770

CofC mailroom date: 10/7/2011

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: _____

H. Rose

Certificates of Correction Branch

571-272-8680 _____

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

3769
Art Unit

I hereby certify that this correspondence is being filed via EFS-Web with the United States Patent and Trademark Office on October 7, 2011.

TOWNSEND and TOWNSEND and CREW LLP

By: /Whitney L. Barnett/
Whitney L. Barnett

PATENT
Attorney Docket No.: 87512-762360 (002600US)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

David K. Swanson, et al.

Patent No.: 8,002,770

Issued: August 23, 2011

For: CLAMP BASED METHODS AND APPARATUS FOR FORMING LESIONS IN TISSUE AND CONFIRMING WHETHER A THERAPEUTIC LESION HAS BEEN FORMED

Customer No.: 20350

Confirmation No.: 5308

Examiner: Aaron F. Roane

Art Unit: 3769

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.323

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.323, Patentees submit a Certificate of Correction correcting a typographical error.

The desired correction is set forth on enclosed form PTO/SB/44.

Pursuant to 37 C.F.R. § 1.20(a), please deduct the fee of $100.00 from Deposit Account No. 20-1430 and any additional fees associated with this Certificate.

Respectfully submitted,

Date: October 7, 2011

Nathan S. Cassell
Reg. No. 42,396

KILPATRICK TOWNSEND & STOCKTON LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
NSC/wlb
63761073 v1

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 8,002,770

APPLICATION NO.: 10/727,144

ISSUE DATE : August 23, 2011

INVENTOR(S) : David K. Swanson, et al.

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

In the Claims:

Column 27, Claim 1, Line 21, please delete "element" and insert --electrode--.

Column 27, Claim 1, Line 22, please delete "element" and insert --electrode--.

Column 28, Claim 15, Line 9, please delete "element" and insert --electrode--.

Column 28, Claim 20, Line 46, please delete "element" and insert --electrode--.

Column 29, Claim 27, Line 29, please delete "element" and insert --electrode--.

Column 29, Claim 30, Line 45, please delete the apostrophe between coagulation and electrode.

Column 30, Claim 32, Line 3, please delete "elements".

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

Nathan S. Cassell, Reg. No. 42,396
KILPATRICK TOWNSEND & STOCKTON LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

63761145 v1

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

HAYNES AND BOONE, LLP
IP Section
2323 Victory Avenue
Suite 700
Dallas TX 75219

JAN 3 1 2011

In re Application of
YU, CHUNG-YI et al. :
Application No.: 10/727,272 : DECISION ON
Filing or 371(c) Date: December 3, 2003 : PETITION
Attorney Docket Number: 24061.25 :

This is a decision on the Petition to Withdraw Holding of Abandonment received in the United States Patent and Trademark Office (USPTO) on November 28, 2007.

This petition is **GRANTED**.

The application was inadvertently abandoned for failure to timely submit the Issue Fee and Publication fee as required by the Notice of Allowance mailed June 22, 2007, which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on October 11, 2007.

Petitioner states that the issue fee transmittal and payment were timely filed via the USPTO on July 31, 2007. Petitioner submitted a copy of the original submission which included a properly completed Certificate of Mailing/Transmission. The Office acknowledges move payment from Serial 10/889,416 to appropriate application.

In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
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

FLIESLER MEYER LLP
650 CALIFORNIA STREET
14TH FLOOR
SAN FRANCISCO CA 94108

MAILED
AUG 24 2010
OFFICE OF PETITIONS

In re Patent No. 7,624,166	: DECISION ON REQUEST FOR
FOOTE et al.	: RECONSIDERATION OF
Issue Date: November 24, 2009	: PATENT TERM ADJUSTMENT
Application No. 10/727,310	: AND
Filed: December 2, 2003	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. FXPL-01059US0	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 25, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred thirty-one (1431) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred thirty-one (1431) days is **GRANTED**.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand four hundred thirty-one (1431) 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 : 7,624,166 B2

DATED : Nov. 24, 2009 **DRAFT**

INVENTOR(S) : Foote 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 1169 days

Delete the phrase "by 1169 days" and insert – by 1431 days--

Day : Monday
Date: 8/23/2010

PALM INTRANET

Time: 12:30:04

PTA Calculations for Application: 10/727310			
Application Filing Date:	12/02/2003	PTO Delay (PTO):	1169
Issue Date of Patent:	11/24/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	1431
PTO Delay Adjustment:	262		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
93	08/23/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	262		
88.5	11/04/2009	PTA 36 MONTHS			
88	11/24/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
87	10/23/2009	EXPORT TO FINAL DATA CAPTURE			
86	10/22/2009	DISPATCH TO FDC			
85	10/22/2009	DISPATCH TO FDC			
84	10/21/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
83	10/16/2009	ISSUE FEE PAYMENT VERIFIED			
82	10/16/2009	ISSUE FEE PAYMENT RECEIVED			
81	09/25/2009	FINISHED INITIAL DATA CAPTURE			
77	09/01/2009	MAIL NOTICE OF ALLOWANCE			
76	08/28/2009	ISSUE REVISION COMPLETED			
75	08/28/2009	DOCUMENT VERIFICATION			
74	08/28/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
73	08/28/2009	NOTICE OF ALLOWABILITY			
66	06/26/2009	DATE FORWARDED TO EXAMINER			
65	05/27/2009	RESPONSE AFTER NON-FINAL ACTION			
64	04/21/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
63	04/14/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
62	03/17/2009	MAIL NON-FINAL REJECTION			
61	03/16/2009	NON-FINAL REJECTION			
58	01/06/2009	DATE FORWARDED TO EXAMINER			

57	01/02/2009	RCE- AF PROCESSED			
56	01/06/2009	DATE FORWARDED TO EXAMINER			
55	01/02/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
54	01/06/2009	DISPOSAL FOR A RCE / CPA / R129			
53	01/02/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
52	12/22/2008	MAIL ADVISORY ACTION (PTOL - 303)			
51	12/19/2008	ADVISORY ACTION (PTOL-303)			
50	12/15/2008	AMENDMENT AFTER FINAL REJECTION			
47	12/15/2008	DATE FORWARDED TO EXAMINER			
46	12/11/2008	AMENDMENT AFTER FINAL REJECTION			
45	11/24/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
44	11/18/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
43	10/06/2008	CASE DOCKETED TO EXAMINER IN GAU			
42	10/02/2008	MAIL FINAL REJECTION (PTOL - 326)			
41	09/30/2008	FINAL REJECTION			
38	08/20/2008	DATE FORWARDED TO EXAMINER			
37	07/10/2008	RESPONSE AFTER NON-FINAL ACTION			
36	04/16/2008	MAIL NON-FINAL REJECTION	1169		-1
35	04/14/2008	NON-FINAL REJECTION			
31	02/14/2008	CASE DOCKETED TO EXAMINER IN GAU			
28	03/19/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	10/17/2007	WITHDRAW FLAGGED FOR 5/25			
26	10/16/2007	FLAGGED FOR 5/25			
25	06/19/2007	CASE DOCKETED TO EXAMINER IN GAU			
24	01/19/2007	CASE DOCKETED TO EXAMINER IN GAU			
23	01/17/2007	TRANSFER INQUIRY TO GAU			
22	06/26/2006	CASE DOCKETED TO EXAMINER IN GAU			
21	03/19/2004	REFERENCE CAPTURE ON IDS			
20	06/16/2006	CASE DOCKETED TO EXAMINER IN GAU			
19	01/27/2006	TRANSFER INQUIRY TO GAU			
18	01/18/2005	TRANSFER INQUIRY TO GAU			
17	11/03/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	10/25/2004	NEW OR ADDITIONAL DRAWING FILED			

15	10/25/2004	MISCELLANEOUS INCOMING LETTER			
14	05/11/2004	REFERENCE CAPTURE ON IDS			
13.7	03/19/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	03/19/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	03/03/2004	APPLICATION RETURN FROM OIPE			
11	03/03/2004	APPLICATION RETURN TO OIPE			
10	03/03/2004	APPLICATION RETURN FROM OIPE			
9	03/03/2004	APPLICATION IS NOW COMPLETE			
8	03/03/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
7	03/03/2004	APPLICATION RETURN TO OIPE			
6	03/02/2004	APPLICATION DISPATCHED FROM OIPE			
5	03/02/2004	APPLICATION IS NOW COMPLETE			
4	02/10/2004	CLEARED BY OIPE CSR			
3	02/10/2004	CASE CLASSIFIED BY OIPE			
2	12/28/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/02/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

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18 MENUHA VENAHALA STREET, ROOM 27
REHOVOT 76209 IL ISRAEL

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Patent No. 7,210,319	:	
Issue Date: May 1, 2007	:	
Application No. 10/727,488	:	NOTICE
Filed: December 5, 2003	:	
Attorney Docket No. 1295RAV-US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 23, 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 **NOT ACCPETED.**

The fee deficiency cannot be accepted because the signature on the petition is not proper. See 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.

There is no indication that David Cooper is authorized to sign on behalf of the assignee. A statement under 37 CFR 3.73(b) should be submitted with a renewed notice of an entity status change.

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 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 related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: David Cooper
Dennemeyer & Co., Ltd.
Regent House Heaton Lane
Stockport, Cheshire
England SK4 1BB

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : **09/13/11**

TO SPE OF : ART UNIT: **3736 Attn: HINDENBURG MAX F (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/727677 Patent No.: 7483735

CofC mailroom date: 03/17/11

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: Please check Claims for the requested changes
Should these changes 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.

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

Comments: OK to enter.

SPE

3736
Art Unit

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United States Patent and Trademark Office
P.O. Box 1450

PATENT, COPYRIGHT & TRADEMARK LAW GROUP
4199 Kinross Lakes Parkway
Suite 275
RICHFIELD OH 44286

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Patent No. 7,100,920	:	
Issue Date: September 5, 2006	:	ON PETITION
Application No. 10/727,683	:	
Filed: December 5, 2003	:	
	:	

This is a decision on the petition under 37 CFR 1.378(c), filed January 24, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This petition expired on September 6, 2010 for failure to pay the 3 ½-year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provide in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mailing date of this decision.

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 the patent, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have first-hand 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. In the event that such inquiry has not been made, petitioner must make such inquiry. If such inquiry

results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

Ramesh Krishnamurthy

for David Bucci
Petitions Examiner
Office of Petitions

cc: Steven Thrasher
391 Sandhill Drive
Richardson, Texas 75080

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AUG 12 2010

OFFICE OF PETITIONS

Boston Scientific Corporation
c/o Frommer Lawrence & Haug LLP
745 Fifth Avenue
New York NY 10151

In re Patent No. 7,625,367 :
Issue Date: December 1, 2009 :
Application No. 10/727,899 : DECISION ON PETITION
Filed: December 3, 2003 :
Attorney Docket No. 21400/0209955-US0 :

This is a decision on the Petition Under 37 CFR 1.183 And Request For Certificate Of Correction Pursuant To 37 CFR 1.323, filed January 5, 2010, which is being treated as a Petition Under 37 CFR 3.81(b), to identify the correct assignee's name on the Title Page of the subject patent. A completed Certificate of Correction Form PTO/SB/44 was submitted with the 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 that 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 name of the assignee's name identified thereon from:

"SciMed Life Systems, Inc."

to:

--Boston Scientific SciMed, Inc.--

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), were accompanied deposit account authorization to charge any required fees. As such, the fees have 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 PTO/SB/44 submitted with the present Petition.

The person signing the petition requests a change of correspondence address to the address given in the petition. There is, however, no indication that the person signing the 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.

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. 7,625,367.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Flynn Barrison
DARBY & DARBY P.C.
P.O. Box 700, Church Street Station
New York, New York 10008-0770

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MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND, WA 98052-6399

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AUG 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Pettigrew et al.	:	
Application No. 10/728,023	:	DECISION ON PETITION
Filed: December 3, 2003	:	
Attorney Docket No. 315549.01	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 19, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue on or before July 16, 2010, as required by the Notice of Allowance and Fee(s) Due mailed April 16, 2010. Accordingly, the application became abandoned on July 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 payment of the issue fee of $1,510, (2) the petition fee of 1,620, and (3) a proper statement of unintentional delay.

Petitioner should note that the Office recognizes that a publication fee of $300 was submitted herein. The publication fee of $300 was not a requisite of the Notice of Allowance and Fees due mailed April 16, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-6059.

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

Alicia Kelley
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of
Lu, et al.
Application No.: 10/728,195
Filed: December 3, 2003
Attorney Docket No. 07917-0269001/UMMC 03-24

:
:DECISION ON APPLICATION
:FOR ADJUSTMENT
:PATENT TERM ADJUTSMENT
:

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed December 17, 2010. Applicant requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be reconsidered.

The request for review of determination of the patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **zero(0) days** with five hundred and seventy days of applicant delay rather than the presently accorded six hundred and thirty-five days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On October 1, 2010, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 0 days. On December 13, 2010, applicant submitted the instant petition. Applicant asserts the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed October 1, 2010, is incorrect in that the applicant delay is five hundred and seventy days, rather than six hundred and thirty-five days. In summary, applicants assert the following:

- a reduction to the patent term adjustment of 10 days should be entered pursuant to 37 CFR 1.704(c)(8) for the filing of a supplemental amendment on October 6, 2005, ten days after a response under 37 CFR 1.704(b) was filed on September 26, 2005.
- a reduction to the patent term adjustment of 140 days should be entered pursuant to 37 CFR 1.704(c)(8) for the filing of a supplemental Information Disclosure Statement

on April 27, 2007, 140 days after a response under 37 CFR 1.704(b) was filed on December 8, 2006.

- a reduction to the patent term adjustment of 92 days should be entered pursuant to 37 CFR 1.704(b) for the filing of Notice of Appeal on January 9, 2008, three months and 92 days after a final rejection was mailed on July 9, 2007.
- the period of reduction of 307 days for the filing of a Request for Continued Examination on August 11, 2008, should be removed.

Applicants' arguments have been considered and are persuasive. It is appropriate to enter periods of reduction of 10 days and 140 days under 37 CFR 1.704(c)(8) for the filing of a supplemental paper on October 6,2 005, and a supplemental Information Disclosure Statement on April 27, 2007, respectively. Further, it is appropriate to enter a period of reduction of 92 days under 37 CFR 1.704(b) for the filing of a Notice of Appeal on January 9, 2008, in excess of three months from mailing date of a final Office action. Lastly, it is appropriate to remove the 307-day reduction to the patent term adjustment for the Request for Continued Prosecution filed August 11, 2008. It is noted that the Notice of Appeal filed January 9, 2008, was entered incorrectly in Office computer systems as having been filed January 9, 2007. This error triggered the 307 days reduction in that a final Office action was mailed July 9, 2007, giving the appearance that a response to this final Office action under 37 CFR 1.704(b) was not filed until August 11, 2008, in the form of a Request for Continued Examination. It is noted that the response to the final Office action under 37 CFR 1.704(b) was filed January 9, 2008, as a Notice of Appeal. Accordingly, the Request for Continued Examination filed August 11, 2008, after the filing of the Notice of Appeal on January 9, 2008, should not have triggered a reduction to the patent term of 307 days. The reduction of 307 days is being removed.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is **zero days** (231 days of Office delay - 570 days of Applicant delay).

The Office is in receipt of the $200.00 fee set forth in 37 CFR 1.18(e) which is a requirement for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

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.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Patent Term Adjustments

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

Application Number*: 10728195 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10728195

Application Filing Date	12/03/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	231
A Delays	231	PTO Manual Adjustment	65
B Delays	0	Applicant Delay (APPL)	635
C Delays	0	Total PTA (days)	0

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
113	01/26/2011		P028	Adjustment of PTA Calculation by PTO	65		0
103	10/01/2010		MN/=.	Mail Notice of Allowance			0
102	09/27/2010		IREV	Issue Revision Completed			0
101	09/27/2010		DVER	Document Verification			0
100	09/27/2010		N/=.	Notice of Allowance Data Verification Completed			0
99	09/27/2010		DOCK	Case Docketed to Examiner in GAU			0
98	09/23/2010		CNTA	Notice of Allowability			0
93	07/29/2010		FWDX	Date Forwarded to Examiner			0
90	07/29/2010		ABN9	Disposal for a RCE / CPA / R129			0
92	07/23/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
91	07/23/2010	01/26/2010	RCEX	Request for Continued Examination (RCE)			84
89	07/23/2010		XT/G	Request for Extension of Time - Granted			0
88	07/23/2010		BRCE	Workflow - Request for RCE - Begin			0
95	03/04/2010		IDSC	Information Disclosure Statement considered			0
94	03/04/2010		IDSC	Information Disclosure Statement considered			0
87	03/04/2010		M844	Information Disclosure Statement (IDS) Filed			0
86	03/04/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
85	03/04/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
84	01/26/2010	11/27/2009	N/AP	Notice of Appeal Filed		60	80
83	01/26/2010		XT/G	Request for Extension of Time - Granted			0
82	08/28/2009		ELC_RVW	Electronic Review			0
81	08/27/2009		EML_NTF	Email Notification			0
80	08/27/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
79	08/17/2009		CTFR	Final Rejection			0
78	06/05/2009		FWDX	Date Forwarded to Examiner			0
77	04/30/2009	01/31/2009	A...	Response after Non-Final Action		89	73
76	04/30/2009		XT/G	Request for Extension of Time - Granted			0
75	10/31/2008		ELC_RVW	Electronic Review			0
74	10/31/2008		EML_NTF	Email Notification			0
73	10/31/2008		MCTNF	Mail Non-Final Rejection			0
72	10/14/2008		CTNF	Non-Final Rejection			0
70	09/08/2008		FWDX	Date Forwarded to Examiner			0
68	09/08/2008		FWDX	Date Forwarded to Examiner			0
66	09/08/2008		ABN9	Disposal for a RCE / CPA / R129			0
71	08/11/2008		IDSC	Information Disclosure Statement considered			0
69	08/11/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
67	08/11/2008	10/09/2007	RCEX	Request for Continued Examination (RCE)		307	56
65	08/11/2008		XT/G	Request for Extension of Time - Granted			0
64	08/11/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
63	08/11/2008		M844	Information Disclosure Statement (IDS) Filed			0
62	08/11/2008		M844	Information Disclosure Statement (IDS) Filed			0
61	08/11/2008		BRCE	Workflow - Request for RCE - Begin			0
56	07/09/2007	04/08/2007	MCTFR	Mail Final Rejection (PTOL - 326)	92		51
55	07/05/2007		CTFR	Final Rejection			0
52	04/30/2007		FWDX	Date Forwarded to Examiner			0
54	04/27/2007		IDSC	Information Disclosure Statement considered			0
53.7	04/27/2007		M844	Information Disclosure Statement (IDS) Filed			0
53	04/27/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
58	01/09/2007		N/AP	Notice of Appeal Filed			0
57	01/09/2007		XT/G	Request for Extension of Time - Granted			0
51	12/08/2006	11/08/2006	A...	Response after Non-Final Action		30	47
50	12/08/2006		XT/G	Request for Extension of Time - Granted			0
47	08/08/2006		MCTNF	Mail Non-Final Rejection			0
46	08/07/2006		CTNF	Non-Final Rejection			0
60	07/11/2006		IDSC	Information Disclosure Statement considered			0

59	07/11/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
44	07/11/2006		IDSC	Information Disclosure Statement considered			0
43	07/11/2006		IDSC	Information Disclosure Statement considered			0
42.7	07/11/2006	05/19/2006	M844	Information Disclosure Statement (IDS) Filed		53	39
42	07/11/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
41.7	07/11/2006		M844	Information Disclosure Statement (IDS) Filed			0
41	07/11/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
40	05/25/2006		FWDX	Date Forwarded to Examiner			0
39	05/19/2006	02/16/2006	A...	Response after Non-Final Action		92	37
38	05/19/2006		XT/G	Request for Extension of Time - Granted			0
37	11/16/2005		MCTNF	Mail Non-Final Rejection			0
36	11/14/2005		CTNF	Non-Final Rejection			0
35	09/30/2005		FWDX	Date Forwarded to Examiner			0
34	09/26/2005	09/22/2005	ELC.	Response to Election / Restriction Filed		4	32
33	09/26/2005		XT/G	Request for Extension of Time - Granted			0
32	06/22/2005	02/03/2005	MCTRS	Mail Restriction Requirement	139		-1
31	06/19/2005		CTRS	Requirement for Restriction / Election			0
30	06/03/2005		DOCK	Case Docketed to Examiner in GAU			0
45	03/02/2005		IDSC	Information Disclosure Statement considered			0
29	03/02/2005		RCAP	Reference capture on IDS			0
28.7	03/02/2005		M844	Information Disclosure Statement (IDS) Filed			0
28	03/02/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
27	07/29/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
24	07/29/2004		DOCK	Case Docketed to Examiner in GAU			0
23	06/24/2004		WROIPE	Application Return from OIPE			0
22	06/24/2004		ROIPE	Application Return TO OIPE			0
21	06/24/2004		WROIPE	Application Return from OIPE			0
20	06/24/2004		COMP	Application Is Now Complete			0
19	06/24/2004		ROIPE	Application Return TO OIPE			0
17	06/24/2004		COMP	Application Is Now Complete			0
18	06/23/2004		WROIPE	Application Return from OIPE			0
16	06/23/2004		ROIPE	Application Return TO OIPE			0
15	06/23/2004		OIPE	Application Dispatched from OIPE			0
14	06/23/2004		COMP	Application Is Now Complete			0
8	06/14/2004		CRFE	CRF Is Good Technically / Entered into Database			0
26	06/04/2004		A.PE	Preliminary Amendment			0
25	06/04/2004		LET.	Miscellaneous Incoming Letter			0
13	06/01/2004		FLFEE	Payment of additional filing fee/Preexam			0
11	06/01/2004		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
10	06/01/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
9	06/01/2004		CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems			0
7	04/07/2004		A.PE	Preliminary Amendment			0
6	04/07/2004		WAMD	Workflow incoming amendment IFW			0
5	03/31/2004		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
4	02/11/2004		L194	Cleared by OIPE CSR			0
3	02/11/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	01/06/2004		SCAN	IFW Scan & PACR Auto Security Review			0
1	12/03/2003		IEXX	Initial Exam Team nn			0

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JUN 21 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,901,690	:	DECISION ON REQUEST
Lu, et al.	:	FOR
Issue Date: March 8, 2011	:	RECONSIDERATION OF
Application No. 10/728,195	:	PATENT TERM ADJUSTMENT
Filed: December 3, 2003	:	and
Atty Docket No. 07917-0269001/UMMC 03-24	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 9, 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 hundred and twenty-nine (129) 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 to the extent indicated herein.**

The instant petition was filed May 9, 2010. Patentees state, in pertinent part:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, Requests for Continued Examination were filed on August 11, 2008, and July 23, 2010. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on October 1, 2010, thereby closing examination of the application on that date. Thus, no continued examination took place during 159 day period from October 1, 2010 (the mailing date of the Notice of Allowance) until March 8, 2011 (the date the patent was

issued). As such a period of 159 days for "B Delay" should be considered from October 1, 2010, to March 8, 2011.

> ...Patentees respectfully request that the period of time erroneously deducted from the period of "B" Delay be restored in its entirety. In the present case, the PTO calculated 434 days of delay for issuance of a patent more than three years after filing. Patentees respectfully submit that the Office's calculation of this "B Delay" is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 560 days (i.e., the sum of 401 days and 159 days).

Patentees' argument has been considered, but is not persuasive. 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 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. 56365, 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.

The review of the application file history reveals that the Office did not calculate the "B" delay period correctly. The error occurred because of an indication in Office PALM records that a Notice of Appeal was filed January 9, 2007. In fact, a Notice of Appeal was not filed January 9, 2007, but was filed January 9, 2008. The "B" period, not including the excluded period, is 616 days, with said period beginning December 4,

2006, and ending August 10, 2008—the day before the date the first Request for Continued Examination (RCE) was filed. The excluded period is 214 days, with said period beginning January 9, 2008, the day the Notice of Appeal was filed[1], and ending August 10, 2008, the day before the date the Request for Continued Examination was filed. Thus, the period of adjustment to the patent term for "B" delay is 402 days (616-214).

Accordingly, the revised patent term adjustment is 0 days (231 days "A" delay + 402 days "B" delay - 92 days of overlap - 570 days of applicant delay.)

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

The application is being forwarded to the Certificates of 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 **zero (0)** days.

---

[1] The appeal period excluded from the "B" delay period is 562 days, not 561. "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." Id. Thus, in this instance, the period of appeal excluded from the "B" delay period is 562 days with said period beginning April 14, 2008, and ending October 27, 2009.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,901,690 B2

DATED : Mar. 8., 2011

INVENTOR(S) : Lu, 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 (59) days

Delete the phrase "by 59 days" and insert – by 0 days--

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JUN 28 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,901,690	:	DECISION ON REQUEST
Lu, et al.	:	FOR
Issue Date: March 8, 2011	:	RECONSIDERATION OF
Application No. 10/728,195	:	PATENT TERM ADJUSTMENT
Filed: December 3, 2003	:	and
Atty Docket No. 07917-0269001/UMMC 03-24	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a **revised** decision on the petition filed on May 9, 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 hundred and twenty-nine (129) 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 to the extent indicated herein.**

The instant petition was filed May 9, 2010. Patentees state, in pertinent part:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, Requests for Continued Examination were filed on August 11, 2008, and July 23, 2010. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on October 1, 2010, thereby closing examination of the application on that date. Thus, no continued examination took place during 159 day period from October 1, 2010 (the mailing date of the Notice of Allowance) until March 8, 2011 (the date the patent was

issued). As such a period of 159 days for "B Delay" should be considered from October 1, 2010, to March 8, 2011.

...Patentees respectfully request that the period of time erroneously deducted from the period of "B" Delay be restored in its entirety. In the present case, the PTO calculated 434 days of delay for issuance of a patent more than three years after filing. Patentees respectfully submit that the Office's calculation of this "B Delay" is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 560 days (i.e., the sum of 401 days and 159 days).

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

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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.

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.

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(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

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.

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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.

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).

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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 August 11, 2008, and the patent issued by virtue of that request on March 8, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on August 11, 2008, and ending on March 8, 2011 is not included in calculating Office delay.

The review of the application file history reveals that the Office did not calculate the "B" delay period correctly. The error occurred because of an indication in Office PALM records that a Notice of Appeal was filed January 9, 2007. In fact, a Notice of Appeal was not filed January 9, 2007, but was filed January 9, 2008. The "B" period, not including the excluded period, is 616 days, with said period beginning December 4, 2006, and ending August 10, 2008—the day before the date the first Request for Continued Examination (RCE) was filed. The excluded period is 214 days, with said period beginning January

9, 2008, the day the Notice of Appeal was filed[4], and ending August 10, 2008, the day before the date the Request for Continued Examination was filed. Thus, the period of adjustment to the patent term for "B" delay is 402 days (616-214).

Accordingly, the revised patent term adjustment is 0 days (231 days "A" delay + 402 days "B" delay - 92 days of overlap - 570 days of applicant delay.)

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

The application is being forwarded to the Certificates of 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 **zero (0)** days.

---

[4] The appeal period excluded from the "B" delay period is 562 days, not 561. "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." Id. Thus, in this instance, the period of appeal excluded from the "B" delay period is 562 days with said period beginning April 14, 2008, and ending October 27, 2009.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,901,690 B2

DATED : Mar. 8., 2011

INVENTOR(S) : Lu, 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 (59) days

Delete the phrase "by 59 days" and insert – by 0 days--

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7097694	2006-08-29	10728311	2003-12-04	4191-00306

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	/Michael E. Taken/	Date (YYYY-MM-DD)	2010-10-22
Name	Michael E. Taken	Registration Number	28120

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7097694
Issue Date: August 29,2006
Application No. 10728311
Filed: December 4,2003
Attorney Docket No. 4191-00306

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

This is a decision on the electronic petition, filed October 22,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 22,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

OPAP IAP12
OCT 2 5 2011
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No. : 7,034,201 B2

Application No. : 10/728,357

Issue Date : April 25, 2006

Inventor(s) : Tracy Doucette et al.

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

October 21, 2011

REQUEST TO CORRECT THE ASSIGNEE UNDER 37 CFR 3.81(b)

Sir:

Enclosed, please find a Certificate of Correction.

Also enclosed please find a check for the processing fee of $130.00.

I hereby state that the failure to include the correct assignee name on the PTOL-85B was inadvertent.

Enclosed, please find a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) are

10/25/2011 EFLORES 00000083 7034201
01 FC:1464 130.00 OP

recorded and reflecting proof of the date the assignments were submitted for recordation.

Please forward to Certificates of Correction Branch, for issuance of a Certificate of Correction.

Respectfully submitted,

EMCH, SCHAFFER, SCHAUB
& PORCELLO CO., L.P.A.

Patrick P. Pacella
Reg. No.: 25,463

P.O. Box 916
Toledo, Ohio 43697
Ph: (419) 243-1294
Fax (419) 243-8502
PPP/kab

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
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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,034,201 B2

APPLICATION NO.: 10/728,357

ISSUE DATE : April 25, 2006

INVENTOR(S) : Tracy Doucette et al.

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

Please correct the listed Assignee to:

University of Prince Edward Island,
Charlottetown, PE (CA); H:S
Rigshospitalet, Copenhagen (DK)

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

Emch, Schaffer, Schaub & Porcello Co., L.P.A.
P.O. Box 916
Toledo, OH 43616-0937

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.

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Washington, D.C. 20231

700079174A

APRIL 26, 2004

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EMCH, SCHAFFER, SCHAUB & PORCELLO CO LPA
CATHERINE B. MARTINEAU, ESQ.
P.O. BOX 916
TOLEDO, OHIO 43697-0916

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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 04/19/2004

REEL/FRAME: 014528/0632
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
BAK-JENSEN, HENRIETTE HUSUM

DOC DATE: 03/08/2004

ASSIGNEE:
H:S RIGSHOSPITALET
BLEGDAMSVEJ 9, WARD 5212
DK-2100 COPENHAGEN S., DENMARK

SERIAL NUMBER: 10728357
PATENT NUMBER:

FILING DATE:
ISSUE DATE:

ALLYSON PURNELL, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

04/19/2004
700079174

OPAP IAP12 OCT 25 2011 PATENT & TRADEMARK OFFICE

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U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Henriette Husum Bak-Jensen

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies)
Name: H:S Rigshospitalet
Internal Address:
Street Address: Blegdamsvej 9, Ward 5212
DK-2100
City: Copenhagen S. State: Denmark Zip:
Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:
☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other
Execution Date: March 8, 2004

4. Application number(s) or patent number(s):
If this document is being filed together with a new application, the execution date of the application is:
A. Patent Application No.(s)
10/728,357
B. Patent No.(s)
Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Catherine B. Martineau, Esq.
Internal Address: Emch, Schaffer, Schaub & Porcello Co., L.P.A.
Street Address: P.O. Box 916
City: Toledo State: OH Zip: 43697-0916

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....$ 40.00
☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number:
15-0825
(Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Catherine B. Martineau	Catherine B. Martineau	16 April 2004
Name of Person Signing	Signature	Date

Total number of pages including cover sheet, attachments, and documents: 3

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

CH $40.00 160826 10728367

Assignment

WHEREAS, I, Henriette Husum Bak-Jensen, a citizen of ***Denmark,*** residing at **Islands Brygge 9, 4th, DK-2300 Copenhagen S., Denmark,** have invented certain new and useful improvements in a **DEVELOPMENTAL ANIMAL MODEL OF TEMPORAL LOBE EPILEPSY** for which an application for a United States Patent was filed on December 4, 2003; and

WHEREAS, H:S RIGSHOSPITALET, of Blegdamsvej 9, Ward 5212, DK-2100 Copenhagen, Denmark is desirous of obtaining my entire right, title and interest in, to and under the said improvements and the said application and any foreign applications based thereupon:

NOW, THEREFORE, in consideration of the payment to me of valuable and adequate consideration, the receipt of which is hereby acknowledged, I, the said **Henriette Husum Bak-Jensen** have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said **H:S RIGSHOSPITALET,** its successors, legal representatives and assigns, my entire right, title and interest in, to and under the said improvements, and the said applications and all divisions, renewals and continuations thereof, and all Letters Patent of the United States and all other foreign countries which may be granted thereon and all reissues and extensions thereof, and I hereby authorize the Commissioner of Patents of the United States and all foreign countries to issue all Letters Patent, for said improvements to the said **H:S RIGSHOSPITALET,** its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND I HEREBY covenant that I have full right to convey my entire interest herein assigned, and that I have not executed, and will not execute, any agreement in conflict herewith.

EXECUTED at Copenhagen March 8th **this** _____ **day of** _____ **2004.**

H. Husum

Henriette Husum Bak-Jensen

Louise Nielsen

Witness

OPAP IAP12 OCT 2 5 2011 PATENT & TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
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APRIL 26, 2004

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EMCH, SCHAFFER, SCHAUB ET.AL.
CATHERINE B. MARTINEAU
P.O. BOX 916
TOLEDO, OH 43697-0916

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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 04/19/2004

REEL/FRAME: 014528/0605
NUMBER OF PAGES: 4

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
DOUCETTE, TRACEY

DOC DATE: 03/04/2004

ASSIGNOR:
PERRY, MELISSA

DOC DATE: 03/04/2004

ASSIGNOR:
RYAN, CATHERINE

DOC DATE: 03/04/2004

ASSIGNOR:
TASKER, R. ANDREW

DOC DATE: 03/04/2004

ASSIGNEE:
UNIVERSITY OF PRINCE EDWARD ISLAND
550 UNIVERSITY A VENUE
CHARLOTTETOWN, PE, CANADA C1E 1Z3

014528/0605 PAGE 2

SERIAL NUMBER: 10728357
PATENT NUMBER:

FILING DATE:
ISSUE DATE:

ANTIONE ROYALL, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

04/19/2004
700079173

Form PTO-1595
(Rev. 03/01)
OMB No. 0651-0027 (exp. 8/31/2002)

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U.S. Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
   Tracey Doucette
   Melissa Perry
   Catherine Ryan
   R. Andrew Tasker

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

OPAP IAP12 OCT 2 5 2011 PATENT & TRADEMARK OFFICE

2. Name and address of receiving party(ies)
   Name: University of Prince Edward Island
   Internal Address:
   Street Address: 550 University Avenue
   City: Charlottetown State: PE Zip: C1E 1Z3
   CANADA
   Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:
   ☒ Assignment ☐ Merger
   ☐ Security Agreement ☐ Change of Name
   ☐ Other
   Execution Date: March 4, 2004

4. Application number(s) or patent number(s):
   If this document is being filed together with a new application, the execution date of the application is:
   A. Patent Application No.(s)
   10/728,357
   B. Patent No.(s)
   Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:
   Name: Catherine B. Martineau, Esq.
   Internal Address: Emch, Schaffer, Schaub & Porcello Co., L.P.A.
   Street Address: P.O. Box 916
   City: Toledo State: OH Zip: 43697-0916

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....$ 40.00
   ☐ Enclosed
   ☒ Authorized to be charged to deposit account

8. Deposit account number:
   15-0825
   (Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.
   To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Catherine B. Martineau	Catherine B. Martineau	16 April 2004
Name of Person Signing	Signature	Date

Total number of pages including cover sheet, attachments, and documents: 4

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

C.H $40.00 10/728,357

Assignment

WHEREAS, we, Tracy Doucette, a citizen of ***Canada***, residing at **46 Beaver Run Road, RR#1, Stanhope, PE, C0A 1P0, Canada, Melissa Perry,** a citizen of ***Canada***, residing at **351A North River Road, Charlottetown, PE, C1A 3M6, Canada, Catherine Ryan,** a citizen of ***Canada***, residing at **46 Beaver Run Road, RR#1, Stanhope, PE, C0A 1P0, Canada** and **R. Andrew Tasker,** a citizen of ***Canada***, residing at **2927 Brackley Point Road, RR#9, Charlottetown, PE, C1E 1Z3, Canada,** have invented certain new and useful improvements in a **DEVELOPMENTAL ANIMAL MODEL OF TEMPORAL LOBE EPILEPSY** for which an application for a United States Patent was filed on December 4, 2003; and

WHEREAS, UNIVERSITY OF PRINCE EDWARD ISLAND, of 550 University Avenue, Charlottetown, PE, C1A 4P3, Canada is desirous of obtaining our entire right, title and interest in, to and under the said improvements and the said application and any foreign applications based thereupon:

NOW, THEREFORE, in consideration of the payment to us of valuable and adequate consideration, the receipt of which is hereby acknowledged, we, the said **Tracy Doucette, Melissa Perry, Catherine Ryan, and R. Andrew Tasker** have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said **UNIVERSITY OF PRINCE EDWARD ISLAND,** its successors, legal representatives and assigns, our entire right, title and interest in, to and under the said improvements, and the said applications and all divisions, renewals and continuations thereof, and all Letters Patent of the United States and all other foreign countries which may be granted thereon and all reissues and extensions thereof, and we hereby authorize the Commissioner of Patents of the United States and all foreign countries to issue all Letters Patent, for said improvements to the said **UNIVERSITY OF PRINCE EDWARD ISLAND**, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND WE HEREBY covenant that we have full right to convey our interest herein assigned, and that we have not executed, and will not execute, any agreement in conflict herewith.

EXECUTED at Charlottetown **this** 4 **day of** March **2004.**

Tracy Doucette

Witness

...2

EXECUTED at Charlottetown **this** 4th **day of** March **2004.**

Melissa Perry

Melissa Perry

Witness

EXECUTED at Charlottetown **this** 4th **day of** March **2004.**

Catherine Ryan

Witness

EXECUTED at CHARLOTTETOWN **this** 4TH **day of** MARCH. **2004.**

R. Andrew Tasker

Witness

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Guaranteed Delivery Date/Time: **October 26, 2011, 12:00 PM**
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Status: **Acceptance**

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Your item was accepted at 9:32 am on October 25, 2011 in TOLEDO, OH 43601. Information, if available, is updated periodically throughout the day. Please check again later.

Detailed Results:

- **Acceptance, October 25, 2011, 9:32 am, TOLEDO, OH 43601**
- **Delivered, October 25, 2011, 8:57 am, ALEXANDRIA, VA 22313**
- **Arrival at Unit, October 25, 2011, 7:12 am, DULLES, VA 20102**
- **Dispatched from USPS Sort Facility, October 24, 2011, TOLEDO, OH 43601**
- **Processed through USPS Sort Facility, October 24, 2011, 5:41 pm, TOLEDO, OH 43601**

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ROBERT K. TENDLER
65 ATLANTIC AVENUE
BOSTON, MA 02110

MAILED
FEB 23 2012
OFFICE OF PETITIONS

In re Patent No. 7,305,076	:	
Issue Date: December 4, 2007	:	
Application No. 10/728,440	:	ON PETITION
Filed: December 5, 2003	:	
Attorney Docket No.: 3052/112	:	

This is a decision on the petition under 37 CFR 1.378(c), filed January 23, 2012, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on December 4, 2011 for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The 3 ½ year maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

/SDB/

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
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ALBEMARLE CORPORATION
PATENT DEPARTMENT
451 FLORIDA STREET
BATON ROUGE, LA 70801

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Frans Lodewijk PLANTENGA, et *al.* :
Application No. 10/728,489 : DECISION ON PETITION
Filed: December 5, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **ACH2976 US** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 17, 2009, to revive the above-identified application.

The petition is **GRANTED**.

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

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 10, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 11, 2008.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

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

The petition is not signed by a registered patent attorney of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Jeremy J. Kliebert appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Kliebert desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted.

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 1797 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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STROOCK & STROOCK & LAVAN, LLP
180 MAIDEN LANE
NEW YORK NY 10038

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SEP 13 2010

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 7,137,985	:	
Issued: November 21, 2006	:	
Application No. 10/728,563	:	
Filed: December 5, 2003	:	
Attorney Docket No. 001227.1396	:	

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

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

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

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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NOV 23 2010

OFFICE OF PETITIONS

Reed Smith, LLP
10 SOUTH WACKER DRIVE
CHICAGO IL 60606-7507

In re Patent No. 7,028,359	:	
Issue Date: April 18, 2006	:	
Application No. 10/728,579	:	ON PETITION
Filed: December 5, 2003	:	
Attorney Docket No. 208059.0003	:	

This is a decision on the petition under 37 CFR 1.378(c), filed August 4, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is GRANTED.

This patent expired on April 18, 2010 for failure to pay the 3.5 year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

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MURPHY & KING PROFESSIONAL CORPORATION
1055 Thomas Jefferson Street, NW
Suite 400
WASHINGTON DC 20007

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MAR 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Sachiko Nemoto, et al.	:	
Application No. 10/728,938	:	DECISION GRANTING PETITION
Filed: December 8, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 5243-002-US01	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 24, 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 23, 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 2477for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement and amendment.

/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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In re Application of	:	
Scott Goldthwaite, et al.	:	
Application No. 10/729,043	:	ON PETITION
Filed: December 5, 2003	:	
Attorney Docket No. WS-104	:	

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 **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 4, 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)(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 November 5, 2009. The Notice of Abandonment was mailed February 22, 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.

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

in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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 November 15, 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) 272-2991.

This application is being referred to Technology Center AU 3691 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

cc: **Owen W. Dukelow**
520 S.W. Yamhill Street
200 Pacific Building
Portland, OR 97204

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MAR 25 2011

OFFICE OF PETITIONS

Workman Nydeggar
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

In re Application of	:	
Todd D. WAKEFIELD et al.	:	DECISION GRANTING PETITION
Application No. 10/729,388	:	UNDER 37 CFR 1.137(b)
Filed: December 5, 2003	:	
Atty. Docket No.: 17354.4.7	:	

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

The petition is **GRANTED**.

The Application became abandoned for failure to reply in a timely manner to the final Office action mailed February 7, 2007, which set a shortened statutory reply period of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The application thus became abandoned on May 8, 2007, with notification mailed September 12, 2007.

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 Request for Continued Examination (RCE), RCE fee, and response, (2) a petition fee of $770, and (3) a statement of unintentional delay. The reply to the outstanding Office action 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 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 (571-272-8427).

The application file will be referred to Technology Center AU 2165 for further action on the filed Response.

Ramesh Krishnamurthy

for David Bucci
Petitions Examiner
Office of Petitions

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K&L Gates LLP
P.O. Box 1135
CHICAGO, IL 60690

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JAN 11 2011
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In re Application of :
Walker et al. :
Application No. 10/729,439 :
Filed: December 5, 2003 :
Attorney Docket No. 3718582-00305 :

DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(b)" filed August 25, 2010. Applicants request that the initial determination of patent term adjustment be corrected from eight hundred seventy-seven (877) days to seven hundred forty-nine (749) days.

The instant application for patent term adjustment is **granted to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 652 days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

The Office issued a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) on June 8, 2010, advising Applicants of a patent term adjustment to date of 877 days. In response, applicants timely filed this application for patent term adjustment with payment of the issue fee on August 25, 2010.

Applicants state the correct patent term adjustment is 749 days.

Issue 1

The Office issued a final Office action on March 17, 2009. The Office failed to receive a response to the Office action or a request for an extension of time. As a result, the application became abandoned on June 18, 2009.

A petition under 37 C.F.R. § 1.137(b) was filed October 23, 2009.

Applicants assert the Office should have entered a 128-day reduction for the 128-day period beginning June 18, 2009, the date of abandonment, and ending October 23, 2009, the date a petition to revive was filed, is 128 days.

Pursuant to 37 C.F.R. § 1.704(c)(3), circumstances that will result in a reduction in the period of adjustment include the abandonment of the application. Therefore, the Office agrees a reduction in patent term adjustment is proper as a result of the abandonment of the instant application. The Office also agrees the period of reduction in patent term adjustment begins on the date of abandonment. However, the Office does not agree the period of reduction in patent term adjustment ends when a petition to revive the application is filed.

The proper reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(3) is the number of days beginning on the date of abandonment and ending on the earlier of:

(1) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or

(2) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed.

The Office issued a decision granting the petition under 37 C.F.R. § 1.137(b) on January 4, 2010, less than four months after the filing date of the petition.

The period of reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(3) is 201 days, which is the number of days beginning on June 18, 2009, the date of abandonment, and ending on January 4, 2010, the date the Office issued a decision reviving the application.

Issue 2

The patent term adjustment determination of 877 days mailed June 8, 2010, included a 24-day increase in patent term adjustment under 37 C.F.R. § 1.703(a)(2).

A review of the record indicates a 24-day reduction in patent term adjustment is not warranted under 37 C.F.R. § 1.703(a)(2).

Pursuant to 37 C.F.R. § 1.703(a)(2), the period of adjustment under 37 C.F.R. § 1.702(a) includes:

> 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.

The Office entered a 24-day increase in patent term adjustment as a result of the Office issuing an Office action four months and 24 days after Applicants filed a RCE and an amendment on October 23, 2009, with the petition under 37 C.F.R. § 1.137(b). However, since the application was abandoned at the time the reply was filed and an Office action was filed within four months

of the date of revival, an increase in patent term adjustment 37 C.F.R. § 1.703(a)(2), is not warranted.

Conclusion

In view of the prior discussion, the proper patent term adjustment is 652 days, which is 914 days of Office delay under 37 C.F.R. § 1.703(a)(1) reduced by 262 (201 + 61) days of delay under 37 C.F.R. § 1.704.

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 C.F.R. §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 C.F.R. § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles S. Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Patent Term Adjustments

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

Application Number*: 10729439 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10729439

Application Filing Date	12/05/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	938
A Delays	938	PTO Manual Adjustment	-225
B Delays	0	Applicant Delay (APPL)	61
C Delays	0	Total PTA (days)	652

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
96	01/04/2011		P028	Adjustment of PTA Calculation by PTO		225	0
86	06/08/2010		MN/=.	Mail Notice of Allowance			0
85	05/12/2010		IREV	Issue Revision Completed			0
84	05/12/2010		DVER	Document Verification			0
83	05/12/2010		N/=.	Notice of Allowance Data Verification Completed			0
82	05/10/2010		CNTA	Notice of Allowability			0
76	04/29/2010		FWDX	Date Forwarded to Examiner			0
75	04/16/2010		A...	Response after Non-Final Action			0
74	03/19/2010		ELC_RVW	Electronic Review			0
73	03/19/2010		EML_NTF	Email Notification			0
72	03/19/2010	02/23/2010	MCTNF	Mail Non-Final Rejection	24		67
71	03/15/2010		CTNF	Non-Final Rejection			0
70	01/12/2010		FWDX	Date Forwarded to Examiner			0
68	01/12/2010		FWDX	Date Forwarded to Examiner			0
66	01/12/2010		ABN9	Disposal for a RCE / CPA / R129			0
63	01/08/2010		EML_NTR	Email Notification			0
65	01/04/2010		MNRAB	Mail Notice of Rescinded Abandonment			0
62	01/04/2010		MPREV	Mail-Petition to Revive Application - Granted			0
64	12/31/2009		NRAB	Notice of Rescinded Abandonment in TCs			0
61	12/31/2009		PREV	Petition to Revive Application - Granted			0
60	12/04/2009		EML_NTR	Email Notification			0
59	12/04/2009		PA..	Change in Power of Attorney (May Include Associate POA)			0
58	11/27/2009		C.AD	Correspondence Address Change			0
69	10/23/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
67	10/23/2009		RCEX	Request for Continued Examination (RCE)			0
57	10/23/2009		PET.	Petition Entered			0
56	10/23/2009		BRCE	Workflow - Request for RCE - Begin			0
55	09/28/2009		MABN2	Mail Abandonment for Failure to Respond to Office Action			0
54	09/25/2009		ABN2	Aband. for Failure to Respond to O. A.			0
53	03/17/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
52	03/15/2009		CTFR	Final Rejection			0
51	12/16/2008		FWDX	Date Forwarded to Examiner			0
50	11/18/2008	09/18/2008	A...	Response after Non-Final Action		61	48
49	11/18/2008		XT/G	Request for Extension of Time - Granted			0
48	06/18/2008		MCTNF	Mail Non-Final Rejection			0
47	06/13/2008		CTNF	Non-Final Rejection			0
44	04/09/2008		FWDX	Date Forwarded to Examiner			0
42	04/09/2008		ABN9	Disposal for a RCE / CPA / R129			0
46	04/07/2008		IDSC	Information Disclosure Statement considered			0
45	04/07/2008		M844	Information Disclosure Statement (IDS) Filed			0
43	04/07/2008		RCEX	Request for Continued Examination (RCE)			0
41	04/07/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
40	04/07/2008		BRCE	Workflow - Request for RCE - Begin			0
39	02/22/2008		FIDC	Finished Initial Data Capture			0
38	01/11/2008		EIDC	Export to Initial Data Capture			0
37	01/07/2008		MN/=.	Mail Notice of Allowance			0
36	01/04/2008		IREV	Issue Revision Completed			0
35	01/04/2008		N/=.	Notice of Allowance Data Verification Completed			0
34	01/04/2008		DVER	Document Verification			0
33	01/04/2008		CNTA	Notice of Allowability			0
30	11/16/2007		P574	Paralegal TD Accepted			0
29	11/15/2007		FWDX	Date Forwarded to Examiner			0
28	11/08/2007		A...	Response after Non-Final Action			0
27	11/08/2007		C604	Substitute Specification Filed			0
26	08/08/2007	02/05/2005	MCTNF	Mail Non-Final Rejection	914		-1

25	08/06/2007	CTNF	Non-Final Rejection	0
22	02/05/2007	DOCK	Case Docketed to Examiner in GAU	0
21	04/30/2006	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
16	09/09/2005	WROIPE	Application Return from OIPE	0
15	09/09/2005	COMP	Application Is Now Complete	0
20	06/08/2005	A.PE	Preliminary Amendment	0
14	06/08/2005	ADDFLFEE	Additional Application Filing Fees	0
13	06/08/2005	OSPECNFD	Ommited Specification Pages. Applicant has Petitioned that the Filing Date not be changed and the P	0
12	05/17/2005	OMIT	Notice of Omitted Items	0
10	03/25/2004	W/OA	Pre-Exam Office Action Withdrawn	0
9	03/25/2004	ROIPE	Application Return TO OIPE	0
8	03/25/2004	WROIPE	Application Return from OIPE	0
7	03/25/2004	ROIPE	Application Return TO OIPE	0
5	03/25/2004	COMP	Application Is Now Complete	0
6	03/24/2004	OIPE	Application Dispatched from OIPE	0
4	01/12/2004	L194	Cleared by OIPE CSR	0
3	01/12/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	01/07/2004	SCAN	IFW Scan & PACR Auto Security Review	0
24	12/05/2003	IDSC	Information Disclosure Statement considered	0
19	12/05/2003	RCAP	Reference capture on IDS	0
18.7	12/05/2003	M844	Information Disclosure Statement (IDS) Filed	0
18	12/05/2003	WIDS	Information Disclosure Statement (IDS) Filed	0
17	12/05/2003	A.PE	Preliminary Amendment	0
1	12/05/2003	IEXX	Initial Exam Team nn	0

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OFFICE OF PETITIONS

K&L Gates LLP
P.O. Box 1135
CHICAGO IL 60690

In re Patent No. 7,892,090
Walker, et al.
Issue Date: February 22, 2011
Application No. 10/729,439
Filed: December 5, 2003
Atty Docket No. **3718582-00305**

: 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 April 18, 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 and fifty-three (953) 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 and fifty-three (953) days is **GRANTED.**

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

The Office is in receipt of the $200. 00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of 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 and fifty-three (953) days.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,892,090 B2

DATED : Feb. 22, 2011

INVENTOR(S) : Walker 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 (859) days

Delete the phrase "by 859 days" and insert – by 953 days--

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MAR 16 2011

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Solutia Inc.
575 Maryville Centre Drive
St. Louis, MO 63141

In re Application of Shively et al.	:	
Application No. 10/729,587	:	Decision on Petition
Filing Date: December 6, 2003	:	
Attorney Docket No. P-477	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 14, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Background

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 8, 2007, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on November 9, 2007.

The Office mailed a Notice of Abandonment on March 21, 2008.

The instant petition and a Notice of Appeal were filed October 14, 2010.

An appeal brief and the $540 fee for filing the brief were filed December 14, 2010.

Discussion

The Office will not address the merits of a petition absent payment of the required petition fee. Although the petition indicates the $1,620 petition fee is being filed with the petition, Office records fail to indicate the Office received the fee. Therefore, the merits of the petition will not be considered at this time and the petition is dismissed.

Any request for reconsideration must include the required $1,620 petition fee.

Petitioner may wish to note the Office has no record of receiving the required $540 fee for the Notice of Appeal filed October 14, 2010.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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United States Patent and Trademark Office
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Solutia Inc.
575 Maryville Centre Drive
St. Louis, MO 63141

MAILED
MAY 31 2011
OFFICE OF PETITIONS

In re Application of Shively et al. :
Application No. 10/729,587 : Decision on Petition
Filing Date: December 6, 2003 :
Attorney Docket No. P-477 :

This is a decision on the petition under 37 CFR 1.137(b) filed April 11, 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 non-final Office action mailed August 8, 2007, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on November 9, 2007.

The Office mailed a Notice of Abandonment on March 21, 2008.

The instant petition requests revival of the application.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee,
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995, or if the application is a design application.

The petition satisfies the requirements set forth above. Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 1794 will be informed of the instant decision and the appeal brief filed October 14, 2010, will be reviewed 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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MAILED
MAY 16 2011
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DENNIS W. DAVIS
APT. 24102
3510 LAKE CENTER DRIVE
MT. DORA, FL 32757

In re Patent No. 7,135,011 :
Issue Date: November 14, 2006 :
Application No. 10/729,757 : ON PETITION
Filed: December 5, 2003 :
Patentee(s) Jeffrey Lewis Powers et al :

This is a decision on the petition under 37 CFR 1.378(c), filed April 14, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Application of	:	
William R. Sweeney	:	DECISION ON PETITION
Application No. 10/729,968	:	TO WITHDRAW
Filed: December 9, 2003	:	FROM RECORD
Attorney Docket No. 021238-414	:	

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 14, 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 Teresa Stanek Rea on behalf of herself.

Teresa Stanek Rea has been withdrawn as attorney of record, however all other attorneys remain of record.

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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JUL 29 2011
OFFICE OF PETITIONS

MARK C. JACOBS, ESQ.
3033 EL CAMINO AVENUE
SACRAMENTO CA 95821-6014

In re Patent No. 7,131,600	:	
Issue Date: November 07, 2006	:	
Application No. 10/730,314	:	DECISION ON PETITION
Filed: December 04, 2003	:	
Attorney Docket No. **1619**	:	

This is a decision on the petition under 37 CFR 1.378(c), filed May 13, 2011, with a certificate of mailing dated May 09, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on November 07, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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

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MAR 08 2011
OFFICE OF PETITIONS

In re Application of :
Melvin, et al. :
Application No. 10/730,390 :
Filed: December 8, 2003 :
Attorney Docket No. 10991796-2 :
For: METHOD AND SYSTEM FOR OUTPUT FLOW CONTROL IN NETWORK MULTIPLEXERS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 31, 2011, to revive the above-identified application.

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

Petitioners state that the above-identified application became abandoned as a result of their failure to timely reply to the Notification of Non-Compliant Appeal Brief, mailed November 17, 2010, which set a one month/30 day extendable period for reply. No Notice of Abandonment has been mailed in this application.

Petitioners are informed that the application never went abandoned. The petition was accompanied by an authorization to charge required fees to petitioners' deposit account. A two month extension of time was due on January 31, 2011. The Office charged the $490.00 two month extension of time to petitioners' deposit account on accounting date February 25, 2011. Applicants filed what appears to be a compliant amendment on January 31, 2011. As a proper reply was timely filed, the application never went abandoned and the petition under 37 CFR 1.137(b)is **dismissed as moot.** No additional fees are required.

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 A.U. 2473 for consideration of the appeal brief filed on January 31, 2011.

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: ROBERT W. BERGSTROM
OLYMPIC PATENT WORKS PLLC
P.O. BOX 4277
SEATTLE, WA 98194-0277

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OCT 06 2010

OFFICE OF PETITIONS

H. C. Chan
T-RAM, Inc.
100 Headquarters Drive
San Jose CA 95134-1370

In re Patent No. 6,979,602
Issue Date: December 27, 2005
Application No. 10/730,755
Filed: December 8, 2003
Attorney Docket No. C016-D-1

NOTICE

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

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

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

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

Petitioner made a payment of $620, representing the deficiency of $490.00 and the surcharge of $130.00 on July 26, 2010. The current 3½ year (large entity) maintenance fee is $980.00. There is no surcharge required for late payment of maintenance fee when notifying the office the change of entity. Therefore, the $130.00 is being credited to petitioner's deposit account.

The person signing the petition requests a change of correspondence address to the address given in the petition. There is, however, no indication that the person signing the 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.

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

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Wesley Webostad
The Webostad Firm, A Professional Corporation
150 North Wiget Lane, Suite 200
Walnut Creek, CA 94598

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MEDTRONIC
Attn: Noreen Johnson - IP Legal Department
2600 Sofamor Danek Drive
MEMPHIS TN 38132

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JAN 05 2011

OFFICE OF PETITIONS

In re Patent No. 7,727,261	:	
Issue Date: 06/01/2010	:	DECISION ON PETITION
Application No. 10/731,210	:	UNDER 37 CFR 1.78(a)(3)
Filed: 12/09/2003	:	
Attorney Docket No. PC398.08/MSDI-1005	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 25, 2010, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to a prior-filed nonprovisional application.

The petition is **DISMISSED.**

The present petition seeks acceptance of a late claim for priority to a prior-filed application. The issue fee was paid on April 13, 2010. The application issued as a patent before a decision was reached on the petition under 37 CFR 1.78(a)(3). Therefore, submission of a certificate of correction (accompanied by the $100.00 fee) is required as a condition for granting the petition under 37 CFR 1.78(a)(3).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition under 37 CFR 1.78(a)(3), a completed certificate of correction, and the $100.00 fee as noted above, must be submitted.

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

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

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

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

Correspondence may also be submitted electronically via EFS-Web.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Lipsitz & McAllister, LLC
755 MAIN STREET
MONROE CT 06468

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Patent No.7,674,280
Nesper, et al.
Issue Date: March 9, 2010
Application No. 10/731,284
Filed: December 9, 2003
Attorney Docket No. **HOE-790**

DECISION FOR REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the "LETTER REGARDING PATENT TERM ADJUSTMENT," filed April 15, 2010, which will be treated under 37 CFR 1.705(d). Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from one thousand, two hundred and twelve (1,212) days to one thousand, sixty (1,060) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On March 9, 2010, the above-identified application matured into U.S. Patent No. 7,674,280, with a revised patent term of 1,212 days. The instant petition was timely filed within two months of the date of issuance of the patent. Patentees assert that the Office failed to account of the filing of a Notice of Appeal on January 7, 2008, and a Request for Continued Examination on April 7, 2008.

A review of the file history reveals that the revised patent term adjustment differs from patentees' calculation due to three factors. The first factor is the calculation of the "B" delay for which patentees' calculate the adjustment period as 394 days. The maximum "B" delay is, in fact, 393 days. The "B" delay period began December 10, 2006, and ended April 6, 2008, on the day before the date the Request for Continued Examination was filed. The maximum "B" delay period is 484 days. The period of appeal must be excluded from the "B" delay. The relevant appeal period began January 7, 2008, with the filing of the Notice of Appeal, and ended on April 6, 2008, the day before the date the Request for Continued Examination was filed. The excluded appeal period is 91 days. Thus, the "B" delay is 393 days (484 -91).

The second factor concerns the patentees assertion that there are 17 days of overlap between the "A" and "B" delay that must be subtracted from the patent term adjustment. The relevant period of overlap for the "B" delay began March 11, 2007, and ended April 6, 2008. It is noted that the "A" and "B" periods of delay can only overlap if the delays occur on the same calendar day. There is no period of delay between the "A" and "B" delay that occurs on the same calendar day.

Thus, the period of overlap to be subtracted from the patent term adjustment is 0 days, not 17 days as patentee asserts.

The third factor, for which patentees do not account, concerns the adjustment to the patent term of 136 days entered after a notice of allowance was mailed on November 2, 2009, four months and 136 days after an amendment after final rejection was filed. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on July 15, 2009, re-opening prosecution and withdrawing the rejection. It was, therefore, appropriate to enter a period of adjustment of 136 days.

In view thereof, the revised patent term adjustment is 1,212 days (1,215 days of Office delay – 3 days of applicant delay). No changes to the patent term adjustment will be entered.

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.

Deposit account 50-0625 will be charged $200.00 for the 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

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DELBERT J. BARNARD
BARNARD, LOOP & MCCORMACK LLP
P.O. BOX 58888
SEATTLE, WA 98138-1888

MAILED

APR 13 2011

OFFICE OF PETITIONS

In re Patent No. 6,854,789 :
Issue Date: February 15, 2005 :
Application No. 10/731,381 : ON PETITION
Filed: December 8, 2003 :
Patentee(s): Michael Kloepfer :

This is a decision in response to the petition, filed February 14, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent under the provisions of 37 CFR 1.378(c).

The petition is **GRANTED**.

This patent expired on February 15, 2009 for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition is timely filed under the provisions of 37 CFR 1.378(c).

The petition is not signed by a registered patent attorney or agent of record. However, in accordance with 37 CFR 1.34, the signature of Leslie A. Kinsmen 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. Kinsmen desires to receive correspondence regarding this patent, then the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to the petitioner herein; however, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2).

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. Nonetheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office. Receipt is acknowledged of the requisite maintenance fee and surcharge.

In view of the above, the 3 ½ year maintenance fee in this case is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

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

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: LESLIE A. KINSMEN
100 QUEEN STREET, SUITE 1100
OTTAWA, ONTARIO, K1P 1J9
CANADA

UNITED STATES PATENT AND TRADEMARK OFFICE

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CAMPBELL STEPHENSON LLP
11401 CENTURY OAKS TERRACE
BLDG. H, SUITE 250
AUSTIN TX 78758

MAILED
MAR 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Lloyd et al.	:	
Application No.: 10/731418	:	DECISION ON
Filing or 371(c) Date: 12/09/2003	:	PETITION
Attorney Docket Number: OIC0117US	:	

This is a decision in response to the petition to withdraw holding of abandonment, filed December 6, 2010. The petition is properly treated under 37 CFR 1.181(a).

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Non-Compliant Amendment (Notice"), mailed May 24, 2010. The Notice set a one (1) month period for reply. No reply having been received, the application became abandoned on June 25, 2010. A Notice of Abandonment was mailed December 2, 2010.

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

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

No petition fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 3624 for re-mailing of the Notice and re-setting the period for reply in the normal course of business.

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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MAYER BROWN, LLP
PO BOX 2828
CHICAGO, IL 60690

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AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of
Ui Sik Kim
Application No. 10/731,481
Filed: December 10, 2003
Attorney Docket No. P69373US0

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 5, 2010.

The request is **NOT APPROVED**.

The Office will not decide request to withdraw from representation as practitioner of record which are filed after the patent has issued. Sections 2540 and 2542 of the Manuel of Patent Procedures (MPEP explain that a practitioner does not have to request permission to withdraw as practitioner of record under 37 CFR 1.36 in order to change the address in a patented filed and to directed notices, receipts and other communications relating to maintenance fees. These requests will be placed in the application but will not be treated on their merits. The above mentioned sections of the MPEP recommend the designation of a fee address or submission of a change in correspondence address in the patented file for directing correspondence relating to maintenance fee payments and other correspondences after issuance. See Form PTO/SB/47, entitled, *"Fee Address" Indication Form* and Form PTO/SB/123, entitled, *Change of Correspondence Address, Patent*

Accordingly, the request to withdraw from record cannot be approved because the request does not include an acceptable current correspondence address for future communications from the Office.

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 571-272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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CROMPTON CORPORATION
BENSON ROAD
MIDDLEBURY CT 06749

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Michael T. COSTELLO et al :
Application No. 10/731,600 : ON PETITION
Filed: December 9, 2003 :
Attorney Docket No. 0209-PA :

This is in response to the "Petition under 37 CFR 1.183 August 26, 2009, to waive re-execution of Declaration of a non-cooperating inventor.

The petition is **DISMISSED**.

Petitioner requested the Office under 37 CFR 1.183, to waive the 37 CFR 1.64 requirement for Dr. Igor Riff, an inventor, to re-execute a Declaration for the above identified application. Authorization was given to charge the required fees to petitioner's deposit account.

On December 9, 2003 the instant application was filed. Subsequently it was discovered through error and without any deceptive intent that the inventorship required correction. Re-executed Declarations and a request to correct inventorship have been received by the Office. All inventors except Dr. Igor Riff have re-executed the Declaration. Petitioner indicates that after diligent efforts to have inventor Dr. Igor Riff sign, Dr. Igor Riff has refused to sign. Specifically, petitioner indicates that he was presented a copy of the Declaration and Power of Attorney along with a complete copy of the application as originally filed. Petitioner submits that diligent efforts have been made to contact inventor Dr. Igor Riff, and that he refuses to sign the appropriate declaration and power of attorney documents and that granting of this petition is necessary in order to preserve the rights of the parties or prevent irreparable damage.

A further review of the application file indicates that on August 17, 2009, the assignee representative received a communication from Dr. Igor Riff regarding his refusal to sign. The letter does not substantiate a refusal to sign, but presents a desire to "get familiar with the rules", hence appearing to constitute conditions necessary for his signature. A request for a condition necessary for signature does not constitute a non-signing inventor who refuses to sign. The petitioner has not presented an extraordinary situation, justifying waiver of 37 CFR 1.183,

when appropriate submissions under 37 CFR 1.47 do present applicant a means to protect the rights concerned parties. The petition is therefore dismissed.

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

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Alexandria, VA 22314

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

Telephone inquiries should be directed to the undersigned at (571) 272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

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SEP 27 2010
OFFICE OF PETITIONS

TOWNSEND AND TOWNSEND AND CREW LLP/ORACLE
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CA 94111-3834

In re Application of	:	
Srinivasulu PURI, *et al.*	:	
Application No. 10/731,623	:	DECISION ON PETITIONS UNDER
Filed: December 8, 2003	:	37 CFR 1.181 AND 37 CFR 1.137(b)
Attorney Docket No. **021756-005300US**	:	

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment and 37 CFR 1.137(b), filed April 30, 2010, to revive the above-identified application.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed August 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 November 27, 2008.

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

The petition under 37 CFR 1.137(b) is **DISMISSED** as moot.

Petitioner asserts that the application is not in fact abandoned because the requisite response, i.e., the submission of two terminal disclaimers and authorization to charge the deposit account for any extensions of time, was filed on January 30, 2009.

The filed record discloses that on January 30, 2009, petitioner submitted two terminal disclaimers and authorization to charge the deposit account for any extensions of time necessary. Petitioner also submitted a supplemental response on October 13, 2009.

The terminal disclaimer(s) filed January 30, 2009 has been entered and made of record per examiner Cervetti's authorization. Any continuing application filed from this application must contain a copy of the terminal disclaimer(s). Each copy of the

terminal disclaimer must be filed with a cover letter requesting the terminal disclaimer(s) be recorded on the continuing application.

The three (3) month extension of time fee is being charged to petitioner's deposit account number 20-1430 in the amount of $1,110 as authorized in the January 30, 2009 transmittal.

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 2436 for appropriate action by the Examiner in the normal course of business on the terminal disclaimers and supplemental response received.

Thurman K. Page
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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REINHART BOERNER VAN DEUREN P.C.
2215 PERRYGREEN WAY
ROCKFORD IL 61107

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Kelkar et al.	:	
Application No. 10/731742	:	DECISION
Filing or 371(c) Date: 12/09/2003	:	ON PETITION
Patent No.: 7623993	:	
Issue Date: 11/24/2009	:	
Attorney Docket Number: 502469	:	

This is a decision on the "Request to Correct Assignee Under 37 C.F.R. § 3.81(b)," filed August 30, 2010, 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 that ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, is an 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.

The processing fee and Certificate of Correction fee has been charged to Petitioner's deposit account.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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In re Patent No. 7081966
Issue Date: July 25,2006
Application No. 10731764
Filed: December 9,2003
Attorney Docket No. SF-3A

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

This is a decision on the electronic petition, filed September 29,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 29,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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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)
7081966	2006-07-25	10731764	2003-12-09	5810-02US

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	/Don Mollick/	Date (YYYY-MM-DD)	2011-09-29
Name	Don Mollick	Registration Number	28972

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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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Patent No. 7,040,706	:	
Issue Date: May 09, 2006	:	
Application No. 10/731,876	:	DECISION ON PETITION
Filed: December 09, 2003	:	
Attorney Docket No. 1499.006US1	:	

This is a decision on the petition under 37 CFR 1.378(c), filed July 26, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The statement under 37 CFR 3.73b does not include a reel/frame or a chain of title. 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).

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

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

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

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

Telephone inquiries should be directed to undersigned at (571) 272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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MINNEAPOLIS MN 55402

MAILED
DEC 23 2010
OFFICE OF PETITIONS

In re Patent No. 7,040,706	:	
Issue Date: May 09, 2006	:	CORRECTED
Application No. 10/731,876	:	DECISION ON PETITION
Filed: December 09, 2003	:	
Attorney Docket No. 1499.006US1	:	

This is a decision on the petition under 37 CFR 1.378(c), filed July 26, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (3) above.

Petitioner has submitted a $65.00 surcharge fee for late payment under 37 CFR 1.20(h), however the required fee for late payment after expiration is $1,640.00 as set forth in 37 CFR 1.20(i)(2).

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

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401 Dulany Street
Alexandria, VA 22314

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

Telephone inquiries should be directed to undersigned at (571) 272-4231.

/Michelle R. Eason/
Michelle R. Eason
Paralegal Specialist
Office of Petitions

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TAFT, STETTINIUS & HOLLISTER LLP
SUITE 1800
425 WALNUT STREET
CINCINNATI, OH 45202-3957

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JAN 25 2011

OFFICE OF PETITIONS

In re Application of
Michael T. McKibben, et al.
Application No. 10/731,906
Filed: December 10, 2003
Attorney Docket No. LET01-GN005

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 20, 2010, to revive the above-identified application, 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 February 17, 2010, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before May 17, 2010.

Petitioner states that a timely reply was mailed via certificate of mailing on August 17, 2010, which included the following papers: a Request for Continued Examination (RCE) and an amendment. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated August 17, 2010, which would have rendered the reply timely if received.

Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of February 17, 2010 is hereby **withdrawn** and the application **restored to pending status**.

In view of the granting of the petition under 37 CFR 1.8(b) the petition filed under 37 CFR 1.137(b) is being dismissed as moot and the petition fee submitted will be refunded to petitioner in due course.

Telephone inquiries concerning this decision should be directed to April M. Wise at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2163 for processing of the RCE previously filed August 19, 2010 and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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MAILED
NOV 10 2011
OFFICE OF PETITIONS

Goodwin Procter, LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

In re Patent No. 7,260,370	:	
Issue Date: August 21, 2007	:	
Application No. 10/732,003	:	ON PETITION
Filed: December 10, 2003	:	
Patentees: James June-Ming Wang, et. al.	:	

This is a decision on the petition under 37 CFR 1.378(c), filed on October 25, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

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

Andrea Smith
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.
10/732,032	12/09/2003	Barbara Chan	62015CIP4(51588)	4360

71284 7590 09/23/2011
EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON, MA 02205

EXAMINER
PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
3774	

MAIL DATE	DELIVERY MODE
09/23/2011	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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Amy Leahy
EDWARDS & ANGELL, LLP
P.O. Box 55874
Boston, Massachusetts 02205

In re Application of:
BARBARA CHAN
Application No. 10/732032
Filed: December 09, 2003
For: PHOTOCHEMICAL
TISSUE BONDING

This is a decision on the petitions under 37 C.F.R. э 1.84(a)(2), filed October 14, 2004 and December 17, 2007, requesting acceptance of color drawings.

The petitions request that the color drawings identified as, figures 10, 12A & 12B, 17 & 26 be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. э 1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. э 1.17(h), three (3) sets of the color drawings in question, a black and white photocopy of said drawings, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

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

The petition was filed without the required specific language as stated above in the brief description of drawings.
Applicant submissions fail to meet all the criteria set out above. Accordingly, the petitions are **DENIED.**

David J Isabella
S.P.E.
Technology Center 3700

PTO/SB/131 (02-10)
Approved for use through 08/31/2013. 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: P011	
Application Number: 10/732,056	Filing Date (or 371(b) or (f) Date): Dec 9, 2003
Patent Number: 7,813,836	Issue Date: Oct 12, 2010
First Named Inventor: Wang, Yulun	
Title: Protocol for a Remotely Controlled Videoconferencing Robot	

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 /Paul Evans/	Date Dec. 10, 2010
Name (Print/Typed) Paul Evans, Officer	Registration Number 36,130

***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.

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InTouch Health
C/O CPA Global
P.O.Box 52050
Minneapolis, MN 55402

Mail Date: 12/20/2010

Applicant	: Yulun Wang	: DECISION ON REQUEST FOR
Patent Number	: 7813836	: RECALCULATION of PATENT
Issue Date	: 10/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/732,056	: OF WYETH
Filed	: 12/09/2003	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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InTouch Health
C/O CPA Global
P.O.Box 52050
Minneapolis, MN 55402

Mail Date: 01/19/2011

Applicant	: Yulun Wang	: DECISION ON REQUEST FOR
Patent Number	: 7813836	: RECALCULATION of PATENT
Issue Date	: 10/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/732,056	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/09/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1861** 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
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6920870	2005-07-26	10732120	2003-12-10	MIWE001

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	/ John M. Taboada /	Date (YYYY-MM-DD)	2010-10-27
Name	John M. Taboada	Registration Number	52268

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. 6920870
Issue Date: July 26,2005
Application No. 10732120
Filed: December 10,2003
Attorney Docket No. MIWE001

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

This is a decision on the electronic petition, filed October 27,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 27,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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FULBRIGHT & JAWORSKI L.L.P
2200 ROSS AVENUE
SUITE 2800
DALLAS TX 75201-2784

MAILED
FEB 03 2011
OFFICE OF PETITIONS

In re Patent No. 7,035,550 Issued: April 25, 2006 Application No. 10/732,171 Filed: December 10, 2003 Attorney Docket No. 64992/P002US/10315852	: : : : :	ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 8, 2010 and December 6, 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**.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1404

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Application of	:	
Masakazu MURAKAMI, et *al.*	:	
Application No. 10/732,373	:	DECISION ON PETITION TO
Filed: December 11, 2003	:	WITHDRAW FROM RECORD
Attorney Docket No. **032817-008**	:	

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 14, 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 request was signed by Teresa S. Rea on behalf of all attorneys of record. Teresa S. Rea has been withdrawn as attorney or agent of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There is an outstanding Office action mailed November 24, 2010 that requires a reply from the applicant.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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LONDA, BRUCE S.
NORRIS MCLAUGHLIN & MARCUS, PA
875 THIRD AVE, 8TH FLOOR
NEW YORK, NY 10022

MAILED

AUG 05 2010

OFFICE OF PETITIONS

In re Application of	:	
Johannes M. Van Noort, et. al.	:	
Application No. 10/732,586	:	DECISION ON PETITION
Filed: December 10, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 101137-53	:	

This is a decision on the petition under 35 U.S.C. 119(a) filed June 22, 2007, which is being treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed applications set forth in the amendment submitted on September 21, 2006. The delay in responding is sincerely regretted.

The petition is **GRANTED.**

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

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

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. §§ 120 and 365(c) is accepted as being unintentionally delayed.

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

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

This application is being forwarded to the examiner of Technology Center Art Unit 1644 for appropriate action on the Request for Continued Examination under 37 CFR 1.114 filed June 22, 2007, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed applications.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/732,586	12/10/2003	1644	770	101137-53	18	2

CONFIRMATION NO. 6818

CORRECTED FILING RECEIPT

27387
LONDA, BRUCE S.
NORRIS MCLAUGHLIN & MARCUS, PA
875 THIRD AVE, 8TH FLOOR
NEW YORK, NY 10022

OC000000042852194

Date Mailed: 08/02/2010

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)

Johannes M. Van Noort, Rijswijk, NETHERLANDS;
Arianne C. Van Sechel, Rijswijk, NETHERLANDS;

Power of Attorney: The patent practitioners associated with Customer Number 27387

Domestic Priority data as claimed by applicant

This application is a DIV of 09/668,969 09/25/2000 ABN
which is a DIV of 08/975,696 11/21/1997 ABN
which is a DIV of 08/750,410 12/09/1996 ABN
which is a 371 of PCT/NL95/00203 06/08/1995

Foreign Applications

EUROPEAN PATENT OFFICE (EPO) 94201653.6 06/09/1994

If Required, Foreign Filing License Granted: 08/10/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/732,586**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Alpha B crystallin for use in diagnosis and therapy of auto-immune diseases in particular multiple sclerosis

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).

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

LANDMARK INTELLECTUAL PROPERTY LAW, PLLC
P.O. BOX 1266
MIDLOTHIAN, VA 23113

MAILED
DEC 15 2010
OFFICE OF PETITIONS

In re Patent No. 7,093,761	:	
Issue Date: August 22, 2006	:	
Application No. 10/732,641	:	DECISION DISMISSING PETITION
Filed: December 10, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 62941.002027	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed October 6, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment, by way of a certificate of correction.

The petition is **DISMISSED**.

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

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

The Certificate of Correction should contain an amendment to the first sentence of the specification setting forth the benefit claim. See MPEP 201.11(III).

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

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

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

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

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Certificate of Corrections at their hotline 571-272-4200.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/17/10

TO SPE OF : ART UNIT 2874

SUBJECT : Request for Certificate of Correction for Appl. N10/732663.-Pt.7153036

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)

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: The Request for Certificate of Correction is to correct printing error in the abstract.

/UYEN-CHAU N. LE/ 2874

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

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER CO 80202

MAILED
OCT 06 2011
OFFICE OF PETITIONS

In re Application of :
William T. Ball :
Application No. 10/732,726 : ON PETITION
Filed: December 10, 2003 :
Attorney Docket No: 5564-152

This is a decision on the petition filed January 25, 2011 for withdrawal of the terminal disclaimer filed September 13, 2010, which is being treated under 37 CFR 1.182.

The petition is **GRANTED**.

The examiner responsible for the above-identified application has indicated that the terminal disclaimer filed September 13, 2010 does not apply to any of the claims as currently amended. Accordingly, on petition the terminal disclaimer is withdrawn.

The petition fee in the amount of $400.00 is required for treatment of the petition under 37 CFR 1.182. Accordingly, per the authorization included with the petition, $400.00 has been charged to deposit account no. 19-1970.

This matter is being referred to Technology Center 3751 to correct the records related to the terminal disclaimer filed September 13, 2010 consistent with this decision.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7281341
Issue Date: October 16,2007
Application No. 10732834
Filed: December 10,2003
Attorney Docket No. B0932.70222US00

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

This is a decision on the electronic petition, filed October 25,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 25,2011 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7281341	2007-10-16	10732834	2003-12-10	B0932.70222US00

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	/Jason M. Honeyman/	Date (YYYY-MM-DD)	2011-10-21
Name	Jason M. Honeyman	Registration Number	31624

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MAILED
JUN 23 2011
OFFICE OF PETITIONS

MCCARTER & ENGLISH, LLP NEWARK
FOUR GATEWAY CENTER
100 MULBERRY STREET
NEWARK NJ 07102

In re Application of	:	
MARLOW	:	
Application No. 10/732,909	:	DECISION ON PETITION
Filed: December 10, 2003	:	TO WITHDRAW
Attorney Docket No. 99879-00006	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 6, 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 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 Michael R. Friscia on behalf of the attorneys of record associated with Customer No. 27614.

The attorneys of record associated with Customer No. 27614 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 copied below until otherwise properly notified.

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

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

cc: IRA M. MARLOWE
BLITZSAFE OF AMERICA, INC.,
33 HONECK STREET
ENGLEWOOD NJ 07631

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
10/732,909	12/10/2003	Ira Marlow	99879-00006

CONFIRMATION NO. 6895

POWER OF ATTORNEY NOTICE

27614
MCCARTER & ENGLISH, LLP NEWARK
FOUR GATEWAY CENTER
100 MULBERRY STREET
NEWARK, NJ 07102

OC000000048295848

Date Mailed: 06/20/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/06/2011.

- 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.

/dcgoodwyn/

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

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

In re Patent No. 6999262
Issue Date: February 14,2006
Application No. 10732999
Filed: December 10,2003
Attorney Docket No. 155634-0156

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

This is a decision on the electronic petition, filed December 8,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 8,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6999262	2006-02-14	10732999	2003-12-10	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

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

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

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

○ The assignee of record of the entire interest

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	/Benoit Castel/	Date (YYYY-MM-DD)	2010-12-08
Name	Benoit CASTEL	Registration Number	35041

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.

PRINTER'S TRIM LINE

PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,745,109

DATED : June 29, 2010

INVENTOR(S) : Donald W. KUFE

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

In title page, item (62) Related U.S. Application Data, insert
--Division of application No. 10/032,786, filed on Dec. 26, 2001, now abandoned.

Provisional application No. 60/257,590, filed on Dec. 22, 2000.

Provisional application No. 60/308,307, filed on Jul. 27, 2001.--.

Accepted
OK to enter
/Kevin K. Hill/
October 1, 2010

MAILING ADDRESS OF SENDER:
Steven L. Highlander
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Ave., Suite 2400
Austin, Texas 78701

PATENT NO. 7,745,109
No. of add'l. copies
@ 50¢ per page

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20101001

DATE : October 01, 2010

TO SPE OF : ART UNIT 1633

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

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

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

okay to enter, updating application status in priority info of the spec.
/JW/

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

FINNEGAN, HENDERSON, FARABOW,
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OCT 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Ben Achour et al.	:	
Application No. 10/733,232	:	ON APPLICATION FOR
Filed: December 12, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 3495.0381-00	:	

This is a decision on the PETITION TO THE DIRECTOR UNDER 37 C.F.R. § 1.181 REQUESTING REVIEW OF THE DISMISSAL OF PATENTEE'S REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT - PRE GRANT filed May 17, 2010. Patentees maintain that the correct patent term adjustment to be indicated on the patent is five hundred nine (509) days.

An initial application for patent term adjustment was timely filed on December 19, 2008. By decision mailed March 17, 2010, the application for patent term adjustment was dismissed. The request for reconsideration of the patent term adjustment to the extent it related to the Office's failure to issue the patent within 3 years of the filing date was dismissed as prematurely filed before issuance of the patent. The Office also dismissed the request to enter a 130 day period of adjustment for Office delay in mailing a response to applicant's request for continued examination filed June 25, 2007 on March 4, 2008. This request was based on the Office withdrawing the September 7, 2007 Office action and mailing a corrected Office action on March 4, 2008.

On instant petition, patentee does not renew their request for reconsideration of the period of delay pursuant to 37 CFR 1.702(b). The patent issued on April 20, 2010. The revised patent term adjustment set forth thereon of 379 days included 75 days of adjustment for Office delay in taking in excess of three

years to issue the patent. Patentees agree with this calculation.

Rather, patentee's continues to maintain that a period of adjustment should have been entered for Office delay in taking action in response to the request for continued examination filed June 25, 2007. The Office's decision not to enter a period of adjustment of 130 days for Office delay in responding to the request for continued examination (RCE) filed June 25, 2007 is affirmed. The mailing of a second Office action on March 4, 2008 withdrawing the first action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on September 7, 2007. This was within four months of the filing of the RCE, and thus, no entry of adjustment for Office delay is warranted.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application Fischer, et al. Application No. 10/733,251 Filed: December 12, 2003 Attorney Docket No. 12587-0040001	: : : : :	DECISION ON PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed May 10, 2011, requesting correction of the initial determination of patent term adjustment (PTA) from one thousand three hundred thirty-six (1336) days to one thousand four hundred twelve (1412) 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 four hundred twelve (1412) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 22, 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 one thousand three hundred thirty-six (1336) 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 four hundred twelve (1412) days.

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

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

The Office initially determined a patent term adjustment of one thousand three hundred thirty-six (1336) days based on an adjustment for PTO delay of one thousand four hundred forty-seven (1447) days pursuant to 37 C.F.R. § 1.703(a)(1), and ninety-nine (99) days pursuant to 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delay of forty-two (42) days pursuant to 37 C.F.R. § 1.704(b), and sixty-two (62) and thirty (30), and seventy-six (76) days pursuant to 37 C.F.R. § 1.704(c)(8). The adjustment of 76 days is at issue.

Applicants assert entitlement to a patent term adjustment of one thousand four hundred twelve (1412) days on the basis that the PTO improperly assessed Applicants a delay of seventy-six (76) days for filing a Supplemental Amendment on December 30, 2010, after Applicants had filed an Amendment on October 16, 2010.

A review of the application file reveals that the Supplemental Amendment filed on December 30, 2010 contained language stating that it was being filed in response to a request from the Examiner.

In view of the above, it is concluded that no applicant delay should have been assessed for the December 30, 2010 Amendment.

Accordingly, the correct determination of PTA at the time of mailing of the Notice of Allowance is **one thousand four hundred twelve (1412) days** (1546 (1447+99) days of PTO delay, reduced by 134 (42+62+30) days of applicant delay).

Receipt of the $200 fee 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 Cliff Congo, Petitions Attorney, at (571)272-3207.

Anthony Knight
Director
Office of Petitions

Enc: updated PAIR screen

Patent Term Adjustments

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

Application Number*: 10733251 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10733251

Application Filing Date	12/12/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	1546
A Delays	1546	PTO Manual Adjustment	76
B Delays	0	Applicant Delay (APPL)	210
C Delays	0	Total PTA (days)	1412

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
117	06/03/2011		P020	Adjustment of PTA Calculation by PTO	76		0
105	02/22/2011	11/15/2010	MN/=.	Mail Notice of Allowance	99		78
104	02/15/2011		IREV	Issue Revision Completed			0
103	02/15/2011		OVER	Document Verification			0
102	02/15/2011		N/=.	Notice of Allowance Data Verification Completed			0
101	02/14/2011		EX.A	Examiner's Amendment Communication			0
100	02/14/2011		CNTA	Allowability Notice			0
97	02/09/2011		EML_NTR	Email Notification			0
96	02/09/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
95	02/03/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
94	01/05/2011		EML_NTR	Email Notification			0
93	01/05/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
91	12/30/2010		FWDX	Date Forwarded to Examiner			0
90	12/30/2010	07/15/2010	SA..	Supplemental Response		169	78
92	12/20/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
89	10/19/2010		FWDX	Date Forwarded to Examiner			0
88	10/15/2010		SA..	Supplemental Response			0
87	09/16/2010		FWDX	Date Forwarded to Examiner			0
86	09/15/2010		SA..	Supplemental Response			0
85	09/10/2010		EML_NTR	Email Notification			0
83	09/10/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
84	09/09/2010		EML_NTR	Email Notification			0
81	09/08/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
82	09/07/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
80	08/30/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
79	07/19/2010		FWDX	Date Forwarded to Examiner			0
78	07/15/2010		A...	Response after Non-Final Action			0
77	04/15/2010		ELC_RVW	Electronic Review			0
76	04/15/2010		EML_NTF	Email Notification			0
75	04/15/2010		MCTNF	Mail Non-Final Rejection			0
74	04/12/2010		CTNF	Non-Final Rejection			0
73	02/18/2010		FWDX	Date Forwarded to Examiner			0
70	02/18/2010		ABN9	Disposal for a RCE / CPA / R129			0
72	02/17/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
71	02/17/2010	11/17/2009	RCEX	Request for Continued Examination (RCE)			67
69	02/17/2010		XT/G	Request for Extension of Time - Granted			0
68	02/17/2010		BRCE	Workflow - Request for RCE - Begin			0
67	11/17/2009		N/AP	Notice of Appeal Filed			0
66	11/16/2009		EML_NTR	Email Notification			0
65	11/16/2009		MSADV	Mail Supplemental Advisory Action			0
64	11/09/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
63	11/09/2009		SADV	Supplemental Examiner Action			0
62	11/05/2009		EML_NTR	Email Notification			0
61	11/05/2009		MCTAV	Mail Advisory Action (PTOL - 303)			0
60	11/02/2009		CTAV	Advisory Action (PTOL-303)			0
59	10/23/2009		FWDX	Date Forwarded to Examiner			0
58	10/21/2009		A.NE	Amendment after Final Rejection			0
57	08/18/2009		ELC_RVW	Electronic Review			0
56	08/18/2009		EML_NTF	Email Notification			0
55	08/18/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
54	08/13/2009		CTFR	Final Rejection			0
52	06/15/2009		FWDX	Date Forwarded to Examiner			0
53	06/10/2009		C614	New or Additional Drawing Filed			0
51	06/10/2009	04/29/2009	A...	Response after Non-Final Action		42	47
50	06/03/2009		EML_NTR	Email Notification			0
49	06/02/2009		NIMA	Mail Notice of Informal or Non-Responsive Amendment			0
48	05/30/2009		FWDX	Date Forwarded to Examiner			0
45	05/22/2009		EML_NTR	Email Notification			0
44	05/22/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
43	05/14/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
47.1	04/29/2009		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
47	04/29/2009		A...	Response after Non-Final Action			0
46	04/29/2009		C614	New or Additional Drawing Filed			0
41	01/29/2009		ELC_RVW	Electronic Review			0
40	01/29/2009		EML_NTF	Email Notification			0
39	01/29/2009	02/12/2005	MCTNF	Mail Non-Final Rejection	1447		0.5
38	01/26/2009		CTNF	Non-Final Rejection			0
31	01/13/2009		DOCK	Case Docketed to Examiner in GAU			0
30	12/15/2008		DOCK	Case Docketed to Examiner in GAU			0
29	07/07/2008		DOCK	Case Docketed to Examiner in GAU			0
28	04/07/2008		DOCK	Case Docketed to Examiner in GAU			0
27	10/17/2007		WS25	Withdraw Flagged for S/25			0
26	10/17/2007		WS25	Withdraw Flagged for S/25			0
25	10/15/2007		FS25	Flagged for S/25			0
24	10/15/2007		FS25	Flagged for S/25			0
23	04/04/2007		DOCK	Case Docketed to Examiner in GAU			0
22	02/08/2007		DOCK	Case Docketed to Examiner in GAU			0
21	03/17/2006		DOCK	Case Docketed to Examiner in GAU			0
20	09/27/2004		DOCK	Case Docketed to Examiner in GAU			0
19	08/24/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
18	08/24/2004		DOCK	Case Docketed to Examiner in GAU			0
17	07/01/2004		LET.	Miscellaneous Incoming Letter			0
15	03/23/2004		COMP	Application Is Now Complete			0
10	03/23/2004		COMP	Application Is Now Complete			0
16	03/22/2004		WRDIPE	Application Return from OIPE			0
14	03/22/2004		RDIPE	Application Return TO OIPE			0
13	03/22/2004		WRDIPE	Application Return from OIPE			0
12	03/22/2004		RDIPE	Application Return TO OIPE			0
11	03/22/2004		WRDIPE	Application Return from OIPE			0
9	03/22/2004		RDIPE	Application Return TO OIPE			0
7	03/22/2004		COMP	Application Is Now Complete			0
8	03/19/2004		OIPE	Application Dispatched from OIPE			0
5	03/02/2004		L128	Cleared by L&R (LARS)			0
4	02/17/2004		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	02/17/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	01/02/2004		SCAN	IFW Scan & PACR Auto Security Review			0
6	12/12/2003		NPRQ	PGPubs nonPub Request			0
1	12/12/2003		IEXX	Initial Exam Team nn			0
0.5	12/12/2003		EFILE	Filing date			0

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OFFICE OF PETITIONS

In re Patent No. 7,974,857	: DECISION ON
Fischer, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/733,251	: of PATENT TERM ADJUSTMENT
Issue Date: July 5, 2011	: and
Filed: December 12, 2003	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 12587-0040001	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed September 2, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand seven hundred ninety-four (1794) days to one thousand eight hundred thirty-six (1836) days.

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

On July 5, 2011, the instant application matured into U.S. Patent No. 7,974,857 with a patent term adjustment of one thousand seven hundred ninety-four (1794) days. The Office determined a patent term adjustment of 1794 days based upon 1546 days of "A" delay plus 1070 days of "B" delay, reduced by 135 days of Applicant delay and 687 days of overlap between "A" and "B" delay.

Patentees argue that even though they filed an RCE on February 17, 2010, they should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on February 22, 2011 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 134 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 1070 days

based on the application having been filed under 35 U.S.C. 111(a) on December 12, 2003 and a request for continued examination under 132(b) having been filed on February 17, 2010. In other words, the 134 day period beginning on the date of mailing of the Notice of Allowance on February 22, 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. 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

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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.

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 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

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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.

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 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 February f17, 2010, and the patent issued by virtue of that request on July 5, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on February 17, 2010 and ending on July 5, 2011 is not included in calculating Office delay.

In addition, Patentees also point out that they should not have been assessed one (1) day of Applicant delay pursuant to 37 CFR 1.704(b). A review of the record reveals that Applicants filed the issue fee on May 23, 2011, in response to a Notice of Allowance mailed on February 22, 2011. As May 22, 2011 fell on a Sunday (*see* 37 CFR 1.7(a)), the issue fee was timely filed, an no applicant delay should have been assessed for this filing.

In view thereof, the correct number of days of patent term adjustment is **one thousand seven hundred ninety-five (1795)** days (1546 days of "A" delay plus 1070 days of "B" delay, reduced by 134 days of Applicant delay and 687 days of overlap).

---

[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 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 **one thousand seven hundred ninety-five (1795) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,974,857 B2

DATED : **July 5, 2011**

INVENTOR(S) : Fischer 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 1794 days.

Delete the phrase "by 1794 days" and insert – by 1795 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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BOHAN MATHERS
PO BOX 17707
PORTLAND, ME 04112-8707

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Patent No. 6,829,974 :
Issue Date: December 14, 2004 :
Application No. 10/733,346 : ON PETITION
Filed: December 12, 2003 :
Attorney Docket No: **10-112** :

This is a decision on the petition filed October 1, 2010 under 37 CFR 1.378(c)[1], to accept the delayed payment of the maintenance fee for the above-identified patent and to change the entity status.

The petition under 37 CFR 1.378 (c) is **GRANTED**.

The patent issued on December 14, 2004. The first maintenance fee due could have been paid during the period from December 14, 2007 to June 16, 2008 or, with a surcharge during the period from June 17, 2008 to December 14, 2008. Accordingly, this patent expired on December 14, 2008 for failure to timely remit the first maintenance fee.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision. Fees in the amount of $490.00 for the first maintenance fee and $1,640.00 for the surcharge have been charged to the credit card provided.

In response to the request under 37 CFR 1.27(g)(2) and notification of loss of entitlement to small entity status, status as a Small Entity has been removed.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1] 37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:
(1) The required maintenance fee set forth in § 1.20(e) through (g);
(2) The surcharge set forth in § 1.20(l)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

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CANTOR COLBURN LLP - IBM AUSTIN
20 Church Street
22nd Floor
Hartford CT 06103

MAILED

OCT 15 2010

OFFICE OF PETITIONS

In re Application of	:	
Chulho Kim et al.	:	
Application No. 10/733,725	:	DECISION ON PETITION
Filed: December 11, 2003	:	
Attorney Docket No. POU920030208US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 20, 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 First Action Interview Office action mailed December 16, 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 17, 2010. A Notice of Abandonment was mailed on July 8, 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. 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 2443 for appropriate action by the Examiner in the normal course of business on the reply received July 20, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/733,847	CARR ET AL.	
	Examiner	Art Unit	
	FRANK W. LU	1634	

ISSUE CLASSIFICATION

ORIGINAL						CROSS REFERENCE(S)							
CLASS				SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)							
435				91.2	435	6	91.1						
INTERNATIONAL CLASSIFICATION					536	23.1	24.3	24.33	25.3				
C	1	2	P	19/34									
C	1	2	Q	1/68									
C	0	7	H	21/02									
C	0	7	H	21/04									
C	0	7	H	21/00									

(Assistant Examiner) (Date)	/Frank W Lu/ 8/27/2010	Total Claims Allowed: 13	
(Legal Instruments Examiner) (Date)	(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
	~~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
1	11		41		71		101		131		161		191
5	12		42		72		102		132		162		192
10	13		43		73		103		133		163		193
2	14		44		74		104		134		164		194
	~~15~~		45		75		105		135		165		195
3	16		46		76		106		136		166		196
	~~17~~		47		77		107		137		167		197
	~~18~~		48		78		108		138		168		198
4	19		49		79		109		139		169		199
6	20		50		80		110		140		170		200
7	21		51		81		111		141		171		201
8	22		52		82		112		142		172		202
	~~23~~		53		83		113		143		173		203
9	24		54		84		114		144		174		204
	~~25~~		55		85		115		145		175		205
11	26		56		86		116		146		176		206
12	27		57		87		117		147		177		207
	~~28~~		58		88		118		148		178		208
13	29		59		89		119		149		179		209
	~~30~~		60		90		120		150		180		210

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/733,855	CARR ET AL.	
	Examiner	Art Unit	
	FRANK W. LU	1634	

ISSUE CLASSIFICATION

ORIGINAL						CROSS REFERENCE(S)							
CLASS			SUBCLASS		CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)							
435			6		435	91.1	91.2						
INTERNATIONAL CLASSIFICATION					536	23.1	24.3	24.33	25.3	25.32			
C	1	2	Q	1/68									
C	1	2	P	19/34									
C	0	7	H	21/02									
C	0	7	H	21/04									
C	0	7	H	21/00									

(Assistant Examiner) (Date)	/Frank W Lu/ 11/17/2010	Total Claims Allowed: 11
(Legal Instruments Examiner) (Date)	(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	1		31		61		91		121		151		181
2	2		32		62		92		122		152		182
7	3		33		63		93		123		153		183
3	4		34		64		94		124		154		184
10	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
4	12		42		72		102		132		162		192
11	13		43		73		103		133		163		193
5	14		44		74		104		134		164		194
6	15		45		75		105		135		165		195
8	16		46		76		106		136		166		196
9	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
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	26		56		86		116		146		176		206
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	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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MAILED
SEP 27 2011
OFFICE OF PETITIONS

STEN R. GERFAST
1802 VALLEY CURVE ROAD
MENDOTA HEIGHTS, MN 55118

In re Application of
Sten R. Gerfast
Application No. 10/733,944
Filed: December 12, 2003
Attorney Docket No. N/A

DECISION ON PETITION

This is a decision on the communication filed June 24, 2011, which is being treated as a petition under 37 CFR 1.137(a), to revive the above-identified application[1].

The application was held abandoned for failure to file a proper response to the final Office action mailed on September 10, 2010. A Notice of Abandonment was mailed May 24, 2011.

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) above.

With respect to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). See MPEP 711.03(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay. Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

Petitioner argues that "The Examiner and the Applicant appear unable to agree on specific words"; and therefore, requests a different Examiner.

[1] The $270 petition fee and Request for Continued Examination fee of $405 were received on June 24, 2011.

While it is noted that petitioner states that phone calls to the Examiner and Supervisory Patent Examiner have gone unanswered, a review of the official file record fails to indicate that the United States Patent and Trademark Office (USPTO) caused the delay that prevented petitioner from responding timely to the Office action.

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 unforeseen fault or imperfection of these agencies and instrumentalities, a failure occurs, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present."

In view of the above, the petition under 37 CFR 1.137(a) is **dismissed**.

Since petitioner failed to meet the burden of 37 CFR 1.137(a), ppetitioner is encouraged to file a petition under the unintentional provisions of 37 CFR 1.137(b), which does not require a showing of the delay in timely responding to the Office action mailed September 10, 2010. An unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $930[2] petition fee. A courtesy copy of a Petition under 37 CFR 1.137(b) is enclosed for petitioner's convenience.

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). A blank form is enclosed for petitioner's convenience.

Any communication with regards to 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 "Petition under 37 CFR 1.137." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

---

[2] Effective September 26, 2011, the petition fee for a petition under 37 CFR 1.137(b) was increased from $810 to $930.

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
40I Dulany Street
Alexandria, VA 22314

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

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

Enclosure: Privacy Act Statement and Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) – Form PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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STEN R. GERFAST
1802 VALLEY CURVE ROAD
MENDOTA HEIGHTS, MN 55118

MAILED

OCT 26 2011

OFFICE OF PETITIONS

In re Application of
Sten R. Gerfast
Application No. 10/733,944
Filed: December 12, 2003
Attorney Docket No. N/A

DECISION ON PETITION

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

In response to the decision mailed September 27, 2011, petitioner submits the present renewed petition along with the petition fee of $930.

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) along with the $405 fee and submission under 37 CFR 1.114; (2) the petition fee of $930; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

A review of the record shows that petitioner submitted a credit card authorization in the amount of $65 to cover the increase in the RCE fee. However, since the RCE was filed prior to the fee increase of September 26, 2011, the overpayment of $65 is unnecessary and 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.

This application file is being referred to Technology Center Art Unit 2834 for processing of the RCE filed on June 24, 2011.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DILLON & YUDELL LLP
8911 NORTH CAPITAL OF TEXAS HWY, SUITE 2110
AUSTIN, TX 78759

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of :
Ravi Kumar ARIMILLI, et *al.* :
Application No. 10/733,953 :
Filed: December 10, 2003 :
Attorney Docket No. **AUS920020194US1** :

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 15, 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 request was signed by Andrew J. Dillon on behalf of all attorneys of record. Andrew J. Dillon has been withdrawn as attorney or agent of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

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

/Monica A. Graves/
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
www.uspto.gov

Daly, Crowley, Mofford & Durkee, LLP
Suite 301A
354a Turnpike Street
Canton, MA 02021-2714

MAILED
MAR 11 2011
OFFICE OF PETITIONS

In re Patent No. 7,194,769
Issue Date: March 20, 2007
Application No. 10/734,083
Filed: December 11, 2003
Patentee(s): Richard Lippmann, et. al.

NOTICE

This is a Notice regarding your communication under 37 CFR 1.28(c) filed on January 10, 2011, for acceptance of a fee deficiency submission.

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**[1]. Therefore, status as a small entity has been removed and any future fee submitted must be paid at the large entity rate.

Since the address given in the present request differs from the correspondence address of record, a courtesy copy of this Notice is being mailed to the address given in the request. Thereafter, all future communications regarding this patent will be mailed solely to the fee address of record until otherwise instructed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Daniel O'Brien
Massachusetts Institute of Technology
Five Cambridge Center, Kendall Square
Room NE25-230
Cambridge, MA 02142-1493

[1] The Office acknowledges receipt of a Statement under 37 CFR 3.73(b) received on January 10, 2011.

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.

HIGH POINT PHARMACEUTICALS, LLC
4170 MENDENHALL OAKS PARKWAY
HIGH POINT NC 27265

MAILED

SEP 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Sauerberg et al.	:	
Application No. 10/734368	:	ON APPLICATION FOR
Filed: 12/12/2003	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
6594.200-US	:	

This is in response to the "PETITION OF PATENT TERM ADJSUTMENT INDICATED IN NOTICE OF ALLOWANCE," filed on May 25, 2010. Applicants assert that the correct patent term adjustment is 676 days rather than 174 days as indicated in the Determination of Patent Term Adjustment Under 35 U.S.C. § 154(b). Applicants assert entitlement to the additional patent term adjustment in view of *Wyeth v. Dudas*, 580 F. Supp.2d 138 (D.D.C. 2008).

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

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

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

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

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).

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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.

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) 272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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	10735030
Filing Date	12-Dec-2003
First Named Inventor	Vahid Saadat
Art Unit	3731
Examiner Name	AMY LANG
Attorney Docket Number	USGINZ02513
Title	Apparatus and methods for forming and securing gastrointestinal tissue folds

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 40518

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

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	USGI Medical, Inc.
Address	1140 Calle Cordillera
City	San Clemente
State	CA
Postal Code	92673
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Johney U. Han/
Name	Johney U. Han
Registration Number	45565

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 : October 7,2011

In re Application of :

Vahid Saadat

Application No : 10735030

Filed : 12-Dec-2003

Attorney Docket No : USGINZ02513

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 October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 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	USGI Medical, Inc.
Name2	
Address 1	1140 Calle Cordillera
Address 2	
City	San Clemente
State	CA
Postal Code	92673
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

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

INTEL CORPORATION
c/o CPA Global
P.O. BOX 52050
MINNEAPOLIS, MN 55402

Mail Date: 08/06/2010

Applicant	: Grant Kloster	: DECISION ON REQUEST FOR
Patent Number	: 7658975	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/735,122	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/12/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1018** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LENOVO (US) IP LAW
1009 THINK PLACE
BUILDING ONE, 4TH FLOOR 4B6
MORRISVILLE NC 27560

MAILED
JAN 3 1 2011
OFFICE OF PETITIONS

In re Application of	:	
Azuma et al.	:	
Application No. 10/735,332	:	DECISION ON PETITION
Filed: December 12, 2003	:	
Attorney Docket No. JP920030049US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 6, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 4, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 5, 2006. A Notice of Abandonment was mailed October 30, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $1,500.00, 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. Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent 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.

Further, 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 application is being referred to Technology Center AU 2115 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Joseph P. Lally
PO Box 684749
Austin, TX 78768-4749

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P.O. Box 1450
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JUN 02 2011

OFFICE OF PETITIONS

DR. ABHINAV AGGARWAL
100 SAINT AYERS WAY
CHAPEL HILL NC 27517

In re Application of
Aggarwal
Application No. 10/735,333
Filed: December 12, 2003
Attorney Docket No.

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed on May 9, 2011.

The petition is **DISMISSED**.

The record reflects that a final Office action was mailed on October 8, 2010, allowing a shortened statutory period for reply of three months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A response was filed on January 7, 2011. By an Advisory Action mailed January 19, 2011, petitioner was advised that the response filed January 7, 2011, failed to place the application in condition for allowance. No further responses were received within the allowable period, and the application became abandoned on January 9, 2011. A Notice of Abandonment was mailed on April 19, 2011. The instant petition was filed on May 9, 2011. Petitioner maintains response to the October 8, 2010, Office action was timely transmitted via facsimile on March 4, 2011, but apparently not received by the Office.

Section 711.03 of the *Manual of Patent Examining Procedure* provides guidance where, as in this case, petitioner is arguing that a timely response to the Office action was mailed and provides, in pertinent part, that:

> Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

> 37 CFR 1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 CFR 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP § 512.

The above-cited section of the MPEP explains that in order for correspondence to receive a filing date as of the date it is transmitted to the Office, the correspondence must contain a proper certificate of mailing pursuant to 37 CFR 1.8. Correspondence may also receive the date of the receipt with the USPTO if petitioner provides an itemized Office date-stamped postcard, or Auto-reply Acknowledgement Receipt, in the case of a facsimile transmission, whereby the USPTO acknowledges receipt of the item mailed. There is no evidence that petitioner used the procedures provided in 37 CFR 1.8[1] and/or 1.10, which, if properly utilized, would allow a filing to be accorded a filing date as of the date mailed or deposited, respectively, rather than the date the filing was received by the Office. The certificate of mailing procedures under 37 CFR 1.8 allow for a filing date to be accorded as of the date the filing was mailed rather than the date the filing was received by the Office provided the procedures set out in 37 CFR 1.8 are followed and the filing is not excepted under 37 CFR 1.8(2)(i). The procedures under 37 CFR 1.10 allow correspondence deposited with the United States Postal Service Express Mail Service pursuant to

---

1 It is noted that 37 CFR 1.8 provides that:

> (a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
>
> (1) Correspondence will be considered as being timely filed if:
>
> (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
>
> (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
>
> (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d);
>
> (C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and
>
> (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

A certificate of mailing as provided by the United States Postal Service is not the certificate of mailing which is referenced by 37 CFR 1.8 cited above. The certificate of mailing referenced by 37 CFR 1.8 consists of a statement that must be affixed to the correspondence in question indicating that paper was deposited with the United States Postal Service first-class mail on a particular date. Applicant is directed to Section 512 of the Manual of Patent Examining Procedure for further guidance on what a certificate of mailing as contemplated by 37 CFR 1.8 looks like and how it should appear on the paper to be filed.

37 CFR 1.10 to be accorded a filing date as of the date-in shown on the Express Mail label rather than the date the filing was received by the Office. Filings made by any other mail service, i.e., first class postage, USPS certified mail, FEDEX, Priority Mail, will not receive the benefit of 37 CFR 1.10.

The holding of abandonment will cannot be withdrawn because petitioner has not provided *prima facie* evidence that a proper response, and any necessary fee for an extension of time, was transmitted to the Office within the period for reply, and has not provided a certificate of mailing pursuant to 37 CFR 1.8, or an USPTO date-stamped postcard or Auto-Reply Acknowledgement receipt evidencing the same. The petition is dismissed accordingly

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1620.00 for a large entity and $810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Petitioner may use the enclosed form to file this petition.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: FORM PTO/SB/64

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

Morrison & Foerster, LLP
755 Page Mill Rd
Palo Alto, CA 94304-1018

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Adam Gold, et. al.	:	
Application No. 10/735,340	:	DECISION ON PETITION
Filed: December 12, 2003	:	TO WITHDRAW
Attorney Docket No. 506512002100	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 CFR § 1.36(b) or 37 CFR § 10.40 filed February 11, 2011.

The request is **NOT APPROVED**.

A review of the file record indicates that the attorneys/agents associated with Customer Number 25226 do not have power of attorney in this patent application but may have been employed in or otherwise engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 CFR § 1.36(b) is not applicable[1].

In this case, it is noted that a change of correspondence address was filed on February 19, 2009. However, a change of correspondence does not affect the power of attorney in the above application. Therefore, since the Office mistakenly changed the power of attorney in this application, the records will be reverted to show that the attorney/agents under Customer Number 20872 remain of record until a proper power of attorney or authorization of agent is filed.

There is an outstanding Office action mailed November 29, 2010, that requires a reply from the applicant.

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

[1] 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.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

Novare Surgical Systems, Inc.
10440a Bubb Road
Cupertino, CA 95014

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

MAILED
MAY 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Adam Gold, et. al.	:	
Application No. 10/735,340	:	DECISION ON PETITION
Filed: December 12, 2003	:	TO WITHDRAW
Attorney Docket No. 506512002100	:	FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent under 37 CFR § 1.36(b) or 37 CFR § 10.40 filed April 22, 2011.

The request is **APPROVED**.

The request was signed by Mika Mayer on behalf of himself and all attorneys/agents associated with Customer Number 20872. Therefore, Mika Mayer and all the attorneys/agents associated with Customer Number 20872 have been withdrawn.

Applicant is reminded that there are no attorneys/agents of record at this time.

There is an outstanding Office action mailed on November 29, 2010 that requires a reply from the applicant.

All future communications from the Office will be directed to the intervening assignee who complied with the requirements of 37 CFR 3.73(b) at the address listed below until otherwise properly notified by the applicant.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

Novare Surgical Systems, Inc.
10440a Bubb Road
Cupertino, CA 95014

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
10/735,340	12/12/2003	Adam Gold	506512002100

CONFIRMATION NO. 3740

POWER OF ATTORNEY NOTICE

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000047583706

Date Mailed: 05/10/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/22/2011.

- 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.

/amsmith/

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

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WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

MAILED

MAR 18 2011

OFFICE OF PETITIONS

In re Application of :
Krieg et al. :
Application No. 10/735,592 :
Filed: December 11, 2003 :
Attorney Dkt. No. C :
1037.70038US01 :
For: 5' CPG NUCLEIC ACIDS AND :
METHODS OF USE :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705" filed February 17, 2011. This request is properly treated under 37 CFR 1.705(b). Applicants request that the determination of patent term adjustment be corrected from two hundred sixty-five (265) days to one thousand six hundred sixteen (1,616) days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

The $200.00 petition fee set forth in 37 CFR 1.18(e) has been assessed. No additional fees are required.

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

actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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 matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
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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Mark S. Peloquin
PELOQUIN, PLLC
Suite 4100
800 Fifth Avenue
Seattle WA 98104-3100

MAILED
MAR 05 2012
OFFICE OF PETITIONS

In re Application of	:	
Davies	:	
Application No. 10/735,950	:	DECISION ON PETITION
Filed: December 14, 2003	:	
Attorney Docket No. 111803.P001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 31, 2012.

The petition is **DISMISSED.**

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

Submission of the required petition fee is a prerequisite prior to treatment on the merits of any petition submitted pursuant to 37 CFR 1.137(b). The instant petition lacks the required petition fee and no authorization to charge a deposit account was included with the petition. In view thereof, a decision on the merits is not forthcoming.

Any request for reconsideration of this decision must include the required petition fee.

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

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

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

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

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

/ALESIA M. BROWN/

Alesia M. Brown
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

Darby & Darby
PO Box 770
Church St. Station
New York, NY 10008-0770

MAILED
DEC 08 2011
OFFICE OF PETITIONS

In re Patent No. 7,413,748	:
Reidenberg et al	: DECISION UPON REMAND AND
Issue Date: August 19, 2008	: RECONSIDERATION OF
Application No. 10/736,049	: PATENT TERM ADJUSTMENT
Filed: December 15, 2003	: AND NOTICE OF INTENT
Attorney Docket No.	: TO ISSUE CERTIFICATE OF
02755/100J524-US1	: CORRECTION
Title: Transdermal	:
Buprenorphine to Treat Pain in	
Sickle Cell Crisis	

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

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by nine hundred and sixty-nine (969) 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 nine hundred and sixty-nine (969) 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 : 7,413,748

DATED : **August 19, 2008** **DRAFT**

INVENTOR(S) : Reidenberg 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 537 days

Delete the phrase "by 537 days" and insert – by 969 days--

Patent Term Adjustments

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

Application Number*: 10736049 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10736049

Application Filing Date	12/15/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	08/19/2008	Non-Overlapping USPTO Delays:	682
A Delays	682	PTO Manual Adjustment	432
B Delays	0	Applicant Delay (APPL)	145
C Delays	0	Total PTA (days)	969

* - 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	12/06/2011		P028	Adjustment of PTA Calculation by PTO	432		0
68	08/19/2008		PTAC	Patent Issue Date Used in PTA Calculation			0
68.5	07/30/2008	12/15/2006	PTA36M	PTA 36 Months	0		0
67	07/17/2008		EFDC	Export to Final Data Capture			0
66	07/16/2008		D1935	Dispatch to FDC			0
65	07/15/2008		PILS	Application Is Considered Ready for Issue			0
64	07/14/2008		N084	Issue Fee Payment Verified			0
63	07/14/2008		IFEE	Issue Fee Payment Received			0
62	05/16/2008		EIDC	Export to Initial Data Capture			0
61	05/13/2008		MN/=.	Mail Notice of Allowance			0
60	05/10/2008		IREV	Issue Revision Completed			0
59	05/10/2008		DVER	Document Verification			0
58	05/10/2008		N/=.	Notice of Allowance Data Verification Completed			0
57	05/10/2008		CNTA	Allowability Notice			0
51	05/09/2008		FWDX	Date Forwarded to Examiner			0
49	05/09/2008		ABN9	Disposal for a RCE / CPA / R129			0
48	04/02/2008		FIDC	Finished Initial Data Capture			0
53	03/06/2008		IDSC	Information Disclosure Statement considered			0
52	03/06/2008		M844	Information Disclosure Statement (IDS) Filed			0
50	03/06/2008		RCEX	Request for Continued Examination (RCE)			0
47	03/06/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
46	03/06/2008		BRCE	Workflow - Request for RCE - Begin			0
45	02/25/2008		EIDC	Export to Initial Data Capture			0
44	02/21/2008		MN/=.	Mail Notice of Allowance			0
43	02/19/2008		IREV	Issue Revision Completed			0
42	02/19/2008		DVER	Document Verification			0
41	02/16/2008		N/=.	Notice of Allowance Data Verification Completed			0
40	02/16/2008		DOCK	Case Docketed to Examiner in GAU			0
39	02/16/2008		CNTA	Allowability Notice			0
33	02/14/2008		P574	PARALEGAL OR ELECTRONIC TERMINAL DISCLAIMER APPROVED			0
31	02/11/2008		FWDX	Date Forwarded to Examiner			0
32	01/31/2008		DIST	Terminal Disclaimer Filed			0
30	01/31/2008		AP/A	Amendment/Argument after Notice of Appeal			0
29	01/31/2008	11/03/2007	N/AP	Notice of Appeal Filed		89	27
28	01/31/2008		XT/G	Request for Extension of Time - Granted			0
27	08/03/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
26	08/01/2007		CTFR	Final Rejection			0
25	05/30/2007		FWDX	Date Forwarded to Examiner			0
24	05/24/2007	03/29/2007	A...	Response after Non-Final Action		56	22
23	05/24/2007		XT/G	Request for Extension of Time - Granted			0
22	12/29/2006	02/15/2005	MCTNF	Mail Non-Final Rejection	682		-1
21	12/22/2006		CTNF	Non-Final Rejection			0
17	12/22/2006		DOCK	Case Docketed to Examiner in GAU			0
16	05/02/2006		DOCK	Case Docketed to Examiner in GAU			0
15	07/21/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
12	07/21/2004		DOCK	Case Docketed to Examiner in GAU			0
20	05/05/2004		IDSC	Information Disclosure Statement considered			0
10	05/05/2004		RCAP	Reference capture on IDS			0
9.7	05/05/2004		M844	Information Disclosure Statement (IDS) Filed			0
9	05/05/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
19	04/21/2004		IDSC	Information Disclosure Statement considered			0
11.7	04/21/2004		M844	Information Disclosure Statement (IDS) Filed			0
11	04/21/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
8	03/24/2004		WROIPE	Application Return from OIPE			0
7	03/24/2004		ROIPE	Application Return TO OIPE			0

5	03/24/2004	COMP	Application Is Now Complete	0
6	03/23/2004	OIPE	Application Dispatched from OIPE	0
18	03/16/2004	IDSC	Information Disclosure Statement considered	0
14.7	03/16/2004	M844	Information Disclosure Statement (IDS) Filed	0
14	03/16/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
4	02/18/2004	L194	Cleared by OIPE CSR	0
3	02/18/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	01/08/2004	SCAN	IFW Scan & PACR Auto Security Review	0
13	12/15/2003	C602	Oath or Declaration Filed (Including Supplemental)	0
1	12/15/2003	IEXX	Initial Exam Team nn	0

Export to: Excel

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/15/11

TO SPE OF : ART UNIT 3687

SUBJECT : Request for Certificate of Correction for Appl. No.: 10736181 Patent No.: 7895094

CofC mailroom date: 03/02/11

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
[redacted]

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.

Comments: Please approve entry

Matthew Gart_____ __3687_____
SPE **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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DANIEL P. MCCARTHY
P.O. BOX 71550
SALT LAKE CITY UT 84171-0550

MAILED

NOV 16 2010

OFFICE OF PETITIONS

In re Patent No. 6,882,878	:	
Issue Date: 19 April, 2005	:	
Application No. 10/736,189	:	DECISION ON PETITION
Filed: 15 December, 2003	:	
Attorney Docket No. 6096	:	

This is a decision on the petition filed on 29 January, 2010, properly treated as a petition pursuant to 37 C.F.R. §1.378(c) to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

NOTE: *The address on the petition is different than that of record.*

If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice must be submitted.

A courtesy copy of this decision will be mailed to Petitioner.

However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. (Forms enclosed.)

The fees appear to have been submitted by the named inventor/patentee—there appears to be no assignee of record.

BACKGROUND

Patent No. 6,882,878 (the '878 patent) issued on 19 April, 2005. The first maintenance fee could have been paid during the period from 19 April, 2008, through midnight 19 October, 2008, or, with a surcharge, during the period from 20 October, 2008, through midnight 19 October 2009. Accordingly, the patent expired after midnight 19 October, 2009, for failure to pay timely the first maintenance fee.

Patent No. 6,882,878
Application No. 10/736,189

The instant petition was filed on 29 January, 2010. Because the petition was submitted within twenty-four (24) months after the six- (6-) month grace period provided in 37 C.F.R. §1.362(e), the petition was timely filed under the provisions of 37 C.F.R. §1.378(c).

The petition pursuant to 37 C.F.R. §1.378(c) is **GRANTED**.

The maintenance fee is hereby accepted—the appropriate fees were submitted *via* check—and the above-identified patent is reinstated as of the mail date of this decision.

The patent file is being returned to IFW Files Repository.

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[1]) 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

CC
BRENDT P. SCHMIDT
2527 GRIEGOS PLACE NW
ALBUQUERQUE NM 87107

[1] 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:

DATE : May 13, 2011

TO SPE OF : ART UNIT 2122

SUBJECT : Request for Certificate of Correction on Patent No.: 7580905

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:

/KAKALI CHAKI/
Supervisory Patent Examiner.Art Unit 2122

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

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS MI 48303

MAILED
FEB 07 2011
OFFICE OF PETITIONS

In re Application of :
CHEW :
Application No. 10/736,888 : DECISION ON PETITION
Filed: December 16, 2003 :
Attorney Docket No. 2500-000022 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 7, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 16, 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 August 17, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $810; 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. 12/252,717, filed October 16, 2008.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $245 extension of time fee submitted with the petition on January 7, 2009, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's Deposit Account No. 08-0750.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED

MAR 18 2011

OFFICE OF PETITIONS

Banner & Witcoff, LTD.
1100 13th Street, N.W.
Ste. 1200
Washington, D.C. 20005

In re Application of	:
Steve DISPENSA et al.	: DECISION GRANTING PETITION
Application No. 10/737,200	: UNDER 37 CFR 1.137(b)
Filed: 15 December 2003	:
Atty Docket No. 007230.00014	

This is a decision on the petition under 37 CFR 1.137(b), filed 22 December 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 4 February 2009 ("outstanding Office action"), which set a shortened statutory period of reply of three (3) months. No reply was received. The application became abandoned on 5 May 2009.

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.

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 22 December 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051).

The application file will be referred to Technology Center Art Unit 2457 for further action on the filed Response.

for Ramesh Krishnamurthy

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,367	12/15/2003	Alan L. Stuart	SJO920030096US1	5359

33224 7590 09/26/2011
INTERNATIONAL BUSINESS MACHINES CORPORATION
650 Harry Road, L2PA/J2C
INTELLECTUAL PROPERTY LAW
SAN JOSE, CA 95120-6099

EXAMINER
ELMORE, STEPHEN C

ART UNIT	PAPER NUMBER
2185	

NOTIFICATION DATE	DELIVERY MODE
09/26/2011	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):

sjiplaw@us.ibm.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

INTERNATIONAL BUSINESS MACHINES CORPORATION
650 Harry Road, L2PA/J2C
INTELLECTUAL PROPERTY LAW
SAN JOSE CA 95120-6099

In re Application of: STUART et al.	)	
Application No. 10/737,367	)	Petition under 37 CFR 1.324
Patent No. **7107416**	)	
Attorney Docket No. **SJO920030096US1**	)	
Filed: December 15, 2003	)	
For: **METHOD, SYSTEM, AND PROGRAM**	)	
FOR IMPLEMENTING RETENTION	)	
POLICIES TO ARCHIVE RECORDS		

In view of the papers and petition filed June 20, 2007, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.324. The inventorship of this application has been changed by adding "David M. Cannon", "Howard N. Martin", and "Avishai H. Hochberg" as co-inventors, such that the current inventorship is now Alan L. Stuart (Scarsdale, NY); Toby Lynn Marek (Santa Clara, CA); David M. Cannon (Tucson, AZ); Howard N. Martin (Vail, AZ); Avishai H. Hochberg (San Jose, CA).

The petition has been **Granted**.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

Inquiries to this decision may be directed to undersigned at (571) 272-4210.

/Mano Padmanabhan/

Mano Padmanabhan, WQAS 2180
Technology Center 2100
Computer Architecture, Software, and Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

WILLIAM J. BOYER, JR
8667 ZIRCON DRIVE, SW
LAKEWOOD WA 94898

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of :
William J. Boyer, Jr. et al. :
Application No. 10/737,531 : DECISION ON PETITION
Filed: December 15, 2003 :
Attorney Docket No. :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 3, 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 February 5, 2008, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 6, 2008. A Notice of Abandonment was mailed on February 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 election and amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the election and amendment are 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.

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 Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2421 for appropriate action by the Examiner in the normal course of business on the reply received June 3, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Colby Nuttall
Durham, Jones & Pinegar
Intellectual Property Law Group
P.O. Box 4050
Salt Lake City, UT 84110

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

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

MAILED

SEP 2 1 2010

OFFICE OF PETITIONS

In re Application of :
Techiera et al. :
Application No. 10/737,538 : ON APPLICATION FOR
Patent No. 7,648,507 : PATENT TERM ADJUSTMENT
Filed: December 16, 2003 :
Issued: January 19, 2010 :
Atty Docket No. : 101896-0224 :
Title: PIVOTING IMPLANT :
HOLDER :

This is a decision on the "Disclosure Letter Patent Term Adjustment Determination 37 CFR 1.705," filed May 20, 2010. Patentee requests that the patent term adjustment be decreased from four hundred and ninety-eight (498) days to four hundred and seventy-six (476) 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 four hundred and seventy-six (476) days is **GRANTED**.

Application No. 10/737,538 matured into U.S. patent No. 7,648,507 on January 19, 2010, with a patent term adjustment of 402 days. On March 19, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On April 20, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION of PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," indicating that the patent term adjustment had been determined to be 498 days.

Patentee has indicated that this patent is not subject to a terminal disclaimer.[1]

37 C.F.R. § 1.704(c)(8) sets forth that the following constitutes a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application, and will result in a reduction of the period of adjustment:

> 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

With this petition, Patentee has argued that one additional period of reduction should have been accorded: a request for continued examination (RCE) was filed on July 13, 2009, and an Information Disclosure Statement (IDS) was filed 22 days later on August 4, 2009.

The Office agrees that this constitutes 22 days of applicant delay, pursuant to 37 C.F.R. § 1.704(c)(8).

It follows that the applicant delay totals 59 (37 + 22) days.

In view thereof, the patent should have issued with a revised patent term adjustment of 476 days (439 days of Office delay + 96 days of B-delay minus 59 days of applicant delay minus zero overlap).

The Office notes that the decision of April 20, 2010 was issued in error as it accorded Patentee 22 more days of patent term adjustment than were warranted. The present decision supersedes the decision mailed on April 20, 2010.

The Office has determined that the patent term adjustment for the above-identified patent is **476 days**. The 22 additional days of adjustment will be removed.

The 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

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[1] Petition, page 1.

of the above-identified patent is extended or adjusted by **four hundred and seventy-six (476) 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 thanks Patentee for his good faith and candor in bringing this to the attention of the Office.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,648,507 B2

DATED : **January 19, 2010** **DRAFT**

INVENTOR(S) : Techiera 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 402 days

Delete the phrase "by 402 days" and insert – by 476 days--

Post-Wyeth calculations

Timely filed: 1 month after Recalc decision
Paid petition fee

Not a 371, no 183

111 application filed 12/16/03
first RCE filed 3/23/07

$\sum_{\text{Examination delay}} = 439$
$\sum_{\text{applicant delay}} = 37 + 22 = 59$

1. $B_{max} = 96$
2. One B-deductions: RCE.
3. Compare A delay
   - 14-month A delay: the 14-mo delay occurred prior to B_{start}.
   - Other A delay: none.
4. $B_{net} = 96 - 0$.
5. $439 + 96 - 59 = 476$.

Has requested 476.

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

SWANSON & BRATSCHUN LLC
8210 SOUTHPARK TERRACE
LITTLETON CO 80120

MAILED
SEP 07 2011
OFFICE OF PETITIONS

In re Patent No. 7,968,110	: DECISION ON
Hubbard	: REQUEST FOR RECONSIDERATION
Application No. 10/737,555	: of PATENT TERM ADJUSTMENT
Issue Date: June 28, 2011	: and
Filed: December 16, 2003	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 0305.03.7	: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)", filed August 29, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from eight hundred six (806) days to nine hundred eleven (911) days.

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

On June 28, 2011, the instant application matured into U.S. Patent No. 7,968,110 with a patent term adjustment of eight hundred six (806) days. The Office determined a patent term adjustment of 806 days based upon 1111 days of Office delay pursuant to 37 CFR 1.703(a)(1), and 62 days of Office delay pursuant to 37 CFR 1.703(a)(2), reduced by 367 days of Applicant delay.

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. The over three year period began on December 17, 2006 and ended on June 15, 2008 (one day before the RCE filing date), and is 547 days, not 548 days as asserted by Patentees. See 35 U.S.C. 154(b)(1)(B)(i).

In addition, Patentees are correct that "A" delay should have been calculated as 867 days, not 1173 days.

In view thereof, the correct number of days of patent term adjustment is **nine hundred ten (910)** days (867 days of "A" delay and 547 days of "B" delay, reduced by 367 days of Applicant delay and 137 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 **nine hundred ten (910) days.**

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 DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,968,110 B2

DATED : **June 28, 2011**

INVENTOR(S) : Hubbard

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 806 days.

Delete the phrase "by 806 days" and insert – by 910 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 3/23/2011

TO SPE OF : ART UNIT 2889

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/738261 Patent No.: 7839089 B2

CofC mailroom date: 3/15/2011

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 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: _____

/Toan Ton/ — SPE

KG — 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
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,597	12/17/2003	Victoria Bellotti	D/A3160	9965

35700 7590 01/11/2011
CASCADIA INTELLECTUAL PROPERTY
500 UNION STREET
SUITE 1005
SEATTLE, WA 98101

EXAMINER
AUGUSTINE, NICHOLAS

ART UNIT	PAPER NUMBER
2179	

MAIL DATE	DELIVERY MODE
01/11/2011	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
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Alexandria, VA 22313-1450
www.uspto.gov

January 11, 2011

CASCADIA INTELLECTUAL PROPERTY
500 UNION STREET
SUITE 1005
SEATTLE WA 98101

In re Application of	:	
Bellotti, Victoria; et al	:	**DECISION ON PETITION**
Application No. 10/738,597	:	
Filed: 12/17/2003	:	
Attorney Docket No. D/A3160	:	

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) December 17, 2003.

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 ☐

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
Publications Branch

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.
10/738,597	12/17/2003	Victoria Bellotti	D/A3160	9965

7590 03/15/2011
CASCADIA INTELLECTUAL PROPERTY
500 UNION STREET
SUITE 1005
SEATTLE, WA 98101

EXAMINER
AUGUSTINE, NICHOLAS

ART UNIT	PAPER NUMBER
2179	

MAIL DATE	DELIVERY MODE
03/15/2011	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 15, 2011

CASCADIA INTELLECTUAL PROPERTY
500 UNION STREET
SUITE 1005
SEATTLE WA 98101

In re Application of	:	
Bellotti, Victoria et al	:	**DECISION ON PETITION**
Application No. 10/738,597	:	
Filed: 12/16/2003	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. D/A3160	:	***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) March 10, 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

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BUCHALTER NEMER
18400 VON KARMAN AVE.
SUITE 800
IRVINE CA 92612

MAILED

SEP 29 2010

OFFICE OF PETITIONS

In re Application of	:	
Hsaio Lai Sean Mei	:	
Application No. 10/738,639	:	DECISION ON PETITION
Filed: December 16, 2003	:	TO WITHDRAW
Attorney Docket No. S2260-0205	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 18, 2010.

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 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.

Accordingly, the request to withdraw from record cannot be approved because the request to change 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. If an assignee has ownership in this application, then a Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be provided 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.

/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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DEC 02 2010

OFFICE OF PETITIONS

BUCHALTER NEMER
18400 VON KARMAN AVE.
SUITE 800
IRVINE, CA 92612

In re Application of	:	
Hsaio Lai Sean Mei, et. al.	:	
Application No. 10/738,650	:	DECISION ON PETITION
Filed: December 16, 2003	:	TO WITHDRAW FROM
Attorney Docket No. S2260-0105	:	RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed August 18, 2010.

The request is **APPROVED**.

The request was signed by Sandra P. Thompson on behalf of herself and all attorneys/agents associated with Customer Number 62993. Therefore, Sandra P. Thompson and all the attorneys/agents associated with Customer Number 62993 have been withdrawn.

Applicant is reminded that there are no attorneys/agents of record at this time.

There is an outstanding Office action mailed on August 26, 2010 that requires a reply from the applicant.

All future communications from the Office will be directed to the intervening assignee who complied with the requirements of 37 CFR 3.73(b) at the address listed below until otherwise properly notified by the applicant.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Screampoint, LLC
325 Sharon Park Drive
Suite 623
Menlo Park, CA 94025

UNITED STATES PATENT AND TRADEMARK OFFICE

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SANDRA P. THOMPSON, PHD
BUCHALTER NEMER
18400 VON KARMAN AVE.
SUITE 800
IRVINE CA 92612

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Hsaio Lai Sean Mei	:	
Application No. 10/738,968	:	DECISION ON PETITION
Filed: December 16, 2003	:	TO WITHDRAW
Attorney Docket No. 45393.00002.UTL1	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 18, 2010.

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 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.

Accordingly, the request to withdraw from record cannot be approved because the request to change 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. If an assignee has ownership in this application, then a Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be provided 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.

/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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Dechert LLP
PO Box 390460
Mountain View CA 94039-0460

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,582,635	:
Sun et al.	: DECISION UPON REMAND AND
Issue Date: September 1, 2009	: RECONSIDERATION OF
Application No. 10/739,190	: PATENT TERM ADJUSTMENT
Filed: December 19, 2003	: AND NOTICE OF INTENT
Attorney Docket No. 379612-215US	: TO ISSUE CERTIFICATE OF CORRECTION
Title: Therapeutic Agents Useful for Pain	:

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

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by one thousand three hundred and twenty-one (1321) 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 thousand three hundred and twenty-one (1321) 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 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 : 7,582,635

DATED : **September 1, 2009** **DRAFT**

INVENTOR(S) : Sun 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 861 days

Delete the phrase "by 861" and insert – by 1321 days--

Day : Friday
Date: 9/10/2010

PALM INTRANET

Time: 11:44:02

PTA Calculations for Application: 10/739190			
Application Filing Date:	12/19/2003	PTO Delay (PTO):	987
Issue Date of Patent:	09/01/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	126
Post-Issue Petitions:	0	Total PTA (days):	1321
PTO Delay Adjustment:	460		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
80	09/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	460		
72.5	08/12/2009	PTA 36 MONTHS	197		
72	09/01/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
71	07/31/2009	EXPORT TO FINAL DATA CAPTURE			
70	07/29/2009	FINISHED INITIAL DATA CAPTURE			
69	07/30/2009	DISPATCH TO FDC			
68	06/25/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
67	06/19/2009	ISSUE FEE PAYMENT VERIFIED			
66	06/19/2009	ISSUE FEE PAYMENT RECEIVED			
65	03/23/2009	EXPORT TO INITIAL DATA CAPTURE			
64	03/20/2009	MAIL NOTICE OF ALLOWANCE			
63	02/24/2009	ISSUE REVISION COMPLETED			
62	02/24/2009	DOCUMENT VERIFICATION			
61	02/24/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	02/17/2009	NOTICE OF ALLOWABILITY			
59	02/09/2009	NOTICE OF APPEAL FILED			
54	12/24/2008	MAIL-PETITION DECISION - GRANTED			
53	12/23/2008	PETITION DECISION - GRANTED			
52	07/20/2008	PETITION ENTERED			
51	12/18/2008	DATE FORWARDED TO EXAMINER			
50	12/11/2008	AMENDMENT AFTER FINAL REJECTION		33	45
49	12/11/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
48	10/16/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			

47	10/09/2008	CORRESPONDENCE ADDRESS CHANGE			
45	08/08/2008	MAIL FINAL REJECTION (PTOL - 326)	291		42
44	05/12/2008	FINAL REJECTION			
43	05/12/2008	DATE FORWARDED TO EXAMINER			
42	06/22/2007	RESPONSE AFTER NON-FINAL ACTION		93	33
41	06/22/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
39	06/22/2007	UNTIMELY (LATE) AMENDMENT FILED			
37	06/22/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	06/22/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	06/22/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	12/21/2006	MAIL NON-FINAL REJECTION			
32	12/15/2006	NON-FINAL REJECTION			
31	12/15/2006	CASE DOCKETED TO EXAMINER IN GAU			
30	06/24/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	08/15/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
28	11/14/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	05/24/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	09/12/2006	DATE FORWARDED TO EXAMINER			
25	08/30/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
24	08/30/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	07/03/2006	MAIL RESTRICTION REQUIREMENT	499		-1
22	06/26/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
21	05/24/2006	REFERENCE CAPTURE ON IDS			
20.7	05/24/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	05/24/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	01/12/2006	CASE DOCKETED TO EXAMINER IN GAU			
18.7	11/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	11/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	08/15/2005	REFERENCE CAPTURE ON IDS			

16.7	08/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	08/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	06/24/2005	REFERENCE CAPTURE ON IDS			
14.7	06/24/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	06/24/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	08/02/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	08/02/2004	CASE DOCKETED TO EXAMINER IN GAU			
11	05/24/2004	APPLICATION RETURN FROM OIPE			
10	05/24/2004	APPLICATION RETURN TO OIPE			
9	05/24/2004	APPLICATION DISPATCHED FROM OIPE			
8	05/24/2004	APPLICATION IS NOW COMPLETE			
7	05/05/2004	ADDITIONAL APPLICATION FILING FEES			
6	05/05/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	03/29/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	02/23/2004	CLEARED BY OIPE CSR			
3	02/23/2004	CASE CLASSIFIED BY OIPE			
2	01/12/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/19/2003	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page

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LANDMARK INTELLECTUAL PROPERTY LAW, PLLC
P.O. BOX 1266
MIDLOTHIAN, VA 23113

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Patent No. 7,328,190	:	
Issue Date: February 5, 2008	:	
Application No. 10/739,301	:	DECISION DISMISSING PETITION
Filed: December 19, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 62941.002005	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed October 6, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment, by way of a certificate of correction.

The petition is **DISMISSED**.

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

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

The Certificate of Correction should contain an amendment to the first sentence of the specification setting forth the benefit claim.. See MPEP 201.11(III).

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

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

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

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

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Certificate of Corrections at their hotline 571-272-4200.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Christopher M. Goff (27839)
ARMSTRONG TEASDALE LLP
7700 Forsyth Boulevard
Suite 1800
St. Louis, MO 63105

Mail Date: 08/03/2010

Applicant	: Xiaomin Zhang	: DECISION ON REQUEST FOR
Patent Number	: 7662745	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/739,385	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/18/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1179** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 02/02/12

TO SPE OF : ART UNIT 2476

SUBJECT : Request for Certificate of Correction for Appl. No.: 10739497 Patent No.: 7869399

CofC mailroom date: 01/10/12

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
[redacted]

Note: **Should the changes in the 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.

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: Verified CofC on 2/21/12 by Examiner Haliyur.Thank you

/Ayaz Sheikh/ — 2476

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

MAILED
SEP 07 2011
OFFICE OF PETITIONS

PERKINS COIE LLP
P.O. BOX 1208
SEATTLE WA 98111-1208

In re Patent No. 7,231,459	:	
Issue Date: June 12, 2007	:	
Application No. 10/739,655	:	ON PETITION
Filed: December 17, 2003	:	
Attorney Docket No. 59013-8001.US01	:	

This is a decision on the petition under 37 CFR 1.378(c), filed August 15, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 12, 2011, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

The patent file is being referred to Files Repository.

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

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
JAN 3 1 2011
OFFICE OF PETITIONS

BRIAN D. VOYCE
8401 STERLING BRIDGE ROAD
CHAPEL HILL NC 27516

In re Application of	:	
HARVEY, et al	:	
Application No. 10/739,784	:	DECISION ON PETITION
Filed: December 18, 2003	:	
Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 31, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 21, 2006, which set a shortened statutory period for reply of **three (3) months.** No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 22, 2006.

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

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

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

This application is being referred to Technology Center AU 1743 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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SAP / FINNEGAN, HENDERSON LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED
AUG 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Gebhart	:	
Application No. 10/740,160	:	ON APPLICATION FOR
Filed: December 17, 2003	:	PATENT TERM
Atty Docket No. 09700.0037-00	:	ADJUSTMENT

This decision is in response to the "NOTICE OF POSSIBLE PTO ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT AND REQUEST FOR REVIEW OF CALCULATION," filed October 16, 2009. The correspondence will be treated as a petition under 37 CFR § 1.705(b). Applicant requests that the determination of patent term adjustment be reviewed for accuracy in light of the filing of multiple Information Disclosure Statements (IDS) on April 1, 2009, July 10, 2009, September 24, 2009, and October 5, 2009.

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

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **seven hundred ten (710)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On September 17, 2009, 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 768 days. On October 16, 2009, applicant submitted the instant petition in which applicant requests the Office clarify how it arrived at the 768 day adjustment period in light of the multiple IDSs filed.

Applicants disclose there should have been a 112 day reduction of patent term adjustment for the IDSs filed on April 1, 2009 and July 10, 2009. The Office has reviewed the application file history and has determined that a 58 day reduction is warranted in connection with the filing of the April 1, 2009 IDS, but that

no reduction is warranted in connection with the filing of the July 10, 2009 IDS.

A Notice of Allowance was mailed on December 23, 2008. On March 20, 2009, applicant filed a request for continued examination (RCE) and IDS. On April 1, 2009, applicant filed another IDS. The April 1, 2009 IDS was properly a basis for reduction of patent term adjustment pursuant to § 1.704(c)(10).

> 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;

A period of reduction of 58 days should have been entered for the period beginning on April 1, 2009, the date the IDS was filed, and ending on May 28, 2009, the date a Notice of Allowance that addressed the April 1, 2009 IDS was mailed. Accordingly, a period of reduction of 58 days is being entered.

No reduction is warranted for the IDS filed on July 10, 2009 because it was filed *prior* to the filing of the August 27, 2009 RCE. Therefore, the Office's subsequent action was not delayed by the filing of the IDS.

It is premature to calculate any reductions in connection with the filing of the September 24, 2009 and October 5, 2009 IDSs. A Notice of Allowance was mailed on September 17, 2009. Applicant paid the issue fee on December 16, 2009. 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 with respect to activity after the mailing of

the September 17, 2009 Notice of Allowance until the patent has issued.

In view thereof, the determination of patent term adjustment at the time of mailing of the notice of allowance is seven hundred ten **(710) days** (768 days of Office delay - 58 days of applicant delay).

Deposit account no. 06-0916 will be charged the required $200.00 fee set forth in 37 CFR 1.18(e).

Applicant is reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified 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 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 Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of updated PALM Screen for Application No. 10/740,160

Day : Thursday
Date: 8/26/2010

PALM INTRANET

Time: 12:57:45

PTA Calculations for Application: 10/740160			
Application Filing Date:	12/17/2003	PTO Delay (PTO):	768
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	710
PTO Delay Adjustment:	-58		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
138	08/26/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		58	
99	09/17/2009	MAIL NOTICE OF ALLOWANCE			
98	09/16/2009	ISSUE REVISION COMPLETED			
97	09/16/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
96	09/16/2009	DOCUMENT VERIFICATION			
95	09/14/2009	NOTICE OF ALLOWABILITY			
94	08/27/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
93	08/27/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
92	09/10/2009	DATE FORWARDED TO EXAMINER			
91	08/27/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
90	09/10/2009	DISPOSAL FOR A RCE / CPA / R129			
89	08/27/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
88	08/27/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
87	08/14/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
86	08/11/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
85	08/10/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
84	08/06/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
83	07/10/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

82	07/10/2009	FILED			
81	07/10/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
80	06/02/2009	EXPORT TO INITIAL DATA CAPTURE			
79	05/28/2009	MAIL NOTICE OF ALLOWANCE			
78	04/01/2009	REFERENCE CAPTURE ON IDS			
77	04/01/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
76	05/15/2009	ISSUE REVISION COMPLETED			
75	05/15/2009	DOCUMENT VERIFICATION			
74	05/15/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
73	05/15/2009	NOTICE OF ALLOWABILITY			
68	03/20/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	04/01/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	04/01/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
65	03/20/2009	REFERENCE CAPTURE ON IDS			
64	03/20/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
63	04/01/2009	DATE FORWARDED TO EXAMINER			
62	03/20/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
61	04/01/2009	DISPOSAL FOR A RCE / CPA / R129			
60	03/20/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	03/20/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
58	02/10/2009	FINISHED INITIAL DATA CAPTURE			
57	12/12/2008	MISCELLANEOUS INCOMING LETTER			
56	12/26/2008	EXPORT TO INITIAL DATA CAPTURE			
55	12/23/2008	MAIL EXAMINER'S AMENDMENT			
54	12/23/2008	MAIL NOTICE OF ALLOWANCE			
53	12/21/2008	ISSUE REVISION COMPLETED			
52	12/21/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
51	12/21/2008	DOCUMENT VERIFICATION			
50	12/21/2008	EXAMINER'S AMENDMENT COMMUNICATION			
49	12/21/2008	NOTICE OF ALLOWABILITY			

48	12/10/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
44	11/17/2008	DATE FORWARDED TO EXAMINER			
43	11/12/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
42	11/17/2008	DATE FORWARDED TO EXAMINER			
41	11/12/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
40	11/17/2008	DISPOSAL FOR A RCE / CPA / R129			
39	11/12/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
38	08/12/2008	MAIL FINAL REJECTION (PTOL - 326)	75		35
37	08/11/2008	FINAL REJECTION			
36	06/05/2008	DATE FORWARDED TO EXAMINER			
35	01/29/2008	RESPONSE AFTER NON-FINAL ACTION			
34	02/21/2008	CORRESPONDENCE ADDRESS CHANGE			
33	10/30/2007	MAIL NON-FINAL REJECTION			
32	10/26/2007	NON-FINAL REJECTION			
31	10/10/2007	DATE FORWARDED TO EXAMINER			
30	09/27/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
29	10/10/2007	DATE FORWARDED TO EXAMINER			
28	09/27/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
27	10/10/2007	DISPOSAL FOR A RCE / CPA / R129			
26	09/27/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
25	06/27/2007	MAIL FINAL REJECTION (PTOL - 326)			
24	06/22/2007	FINAL REJECTION			
23	04/04/2007	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
22	04/18/2007	DATE FORWARDED TO EXAMINER			
21	04/04/2007	RESPONSE AFTER NON-FINAL ACTION			
20	01/11/2007	MAIL NON-FINAL REJECTION	693		-1
19	01/08/2007	NON-FINAL REJECTION			
18	06/17/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
17	12/05/2006	CASE DOCKETED TO EXAMINER IN GAU			
16.7	06/17/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/17/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

15	05/05/2005	CORRESPONDENCE ADDRESS CHANGE			
14	05/06/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
13	03/22/2005	CASE DOCKETED TO EXAMINER IN GAU			
12	02/19/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	02/19/2005	CASE DOCKETED TO EXAMINER IN GAU			
10	04/28/2004	PRELIMINARY AMENDMENT			
9	04/28/2004	WORKFLOW INCOMING AMENDMENT IFW			
8	03/31/2004	APPLICATION RETURN FROM OIPE			
7	03/31/2004	APPLICATION RETURN TO OIPE			
6	03/31/2004	APPLICATION DISPATCHED FROM OIPE			
5	03/31/2004	APPLICATION IS NOW COMPLETE			
4	02/19/2004	CLEARED BY OIPE CSR			
3	02/19/2004	CASE CLASSIFIED BY OIPE			
2	01/07/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/17/2003	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page

PTO/SB/44 (09-07)
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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7/787,357 B2

APPLICATION NO.: 10/740,291

ISSUE DATE : August 31, 2010

INVENTOR(S) : Kelley et al

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

Column 15 line 5 please delete"y_L*(l,n) and insert - y_L*(ll,n)-

Column 16 line 18 please delete "y_L*(l,n) and insert -y_L*(ll,n)-

Column 16 line 23 please delete "item" and insert - from-

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

Law Office of Charles W. Bethards, LLP
P.O. Box 1622
Colleyville, TX 76034

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.

Sam, Phirin (AU2619)

To: Sheikh, Ayaz
Subject: RE: NEW Director's Report SAMPLE (2).doc Request for certificate of correction for ser. no. 110/740291

From: Talley, Magdalene
Sent: Tuesday, November 16, 2010 2:51 PM
To: Sheikh, Ayaz
Subject: NEW Director's Report SAMPLE (2).doc Request for certificate of correction for ser. no. 110/740291

Paper No.: _____

DATE : November 16, 2010

TO SPE OF : ART UNIT 2476

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/740291 Patent No.: 7787357

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

Comments: The request for correcting is OK to enter.

SPE /Ayaz Sheikh/ **Art Unit** 2476

UNITED STATES PATENT AND TRADEMARK OFFICE

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MANDEL & ADRIANO
SUITE 203
572 EAST GREEN STREET
PASADENA CA 91101

MAILED

AUG 3 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,470,537 :
Issue Date: December 30, 2008 :
Application No. 10/740,315 : DECISION ON PETITION
Filed: December 17, 2003 :
Attorney Docket No. 30448.77USC1 :

This is a decision on the Request For Certificate Of Correction Under 35 U.S.C. §255 and 37 CFR §1323, filed March 2, 2009, which is being treated as a Petition Under 37 CFR 3.81(b) to accept the omission of the 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 add the omission of the assignee's name on the previously submitted PTOL-85B and that such was an clerical error. Accordingly, petitioner requests 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. 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 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. 7,470,537.

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

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

MAILED
SEP 13 2010
OFFICE OF PETITIONS

In re Application of	:	
Richard Gerard Newman	:	
Application No. 10/740,472	:	DECISION ON PETITION
Filed: December 22, 2003	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. CQ10340	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed September 1, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to a prior-filed provisional application.

The petition is **DISMISSED.**

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

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

This pending nonprovisional application was filed on December 22, 2003 and is a continuation of PCT application PCT/IB02/03362 which was filed June 20, 2002, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/300,162, which was filed on June 22, 2001, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. An incorporation by reference statement added after an

application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 119(e) after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 119(e) is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

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

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 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

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

MAILED

APR 05 2011

OFFICE OF PETITIONS

In re Application of	:	
Richard Gerard Newman	:	
Application No. 10/740,472	:	DECISION ON PETITION
Filed: December 22, 2003	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. CQ10340	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed March 7, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

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

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

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

The prior petition under 37 CFR 1.78(a)(6) was dismissed in a decision mailed March 24, 2010 for failure to provide a proper amendment to the specification. This renewed petition provides a proper amendment.

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

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

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

Any inquiries concerning this decision may be directed to Carl Friedman at (571) 272-6842. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center Art Unit 3735 for examination in due course.

Carl Friedman
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
10/740,472	12/22/2003	3735	1176	CQ10340	21	6

CONFIRMATION NO. 3603

CORRECTED FILING RECEIPT

23373
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

OC000000046928853

Date Mailed: 04/05/2011

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

Applicant(s)

Richard Gerard Newman, Templestowe, AUSTRALIA;

Power of Attorney: The patent practitioners associated with Customer Number 23493

Domestic Priority data as claimed by applicant

This application is a CON of PCT/IB02/03362 06/20/2002
which claims benefit of 60/300,162 06/22/2001

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/12/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/740,472**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

ASYMMETRIC INDUCTIVE BAND

Preliminary Class

600

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
10/740,486	12/22/2003	Robert A. Vanderhye		4533

7590 11/30/2010

Robert A. Vanderhye
801 Ridge Dr.
McLean, VA 22101

EXAMINER
SINGH, SATWANT K

ART UNIT	PAPER NUMBER
2625	

MAIL DATE	DELIVERY MODE
11/30/2010	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

November 30, 2010

Robert A.Vanderhye
801 Ridge Dr.
McLean VA 22101

In re Application of	:	**DECISION ON PETITION**
VANDERHYE, ROBERT A.	:	
Application No. **10/740486**	:	***ACCEPTANCE OF COLOR***
Filed: **12/22/2003**	:	***DRAWINGS***
Attorney Docket No: **None**	:	

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) December 22, 2003.

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.

/Bernadette Queen/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

MAILED
MAR 16 2011
OFFICE OF PETITIONS

In re Application of	:	
Fournier et al.	:	DECISION ON PETITION
Application No. 10/740,583	:	TO WITHDRAW
Filed: December 22, 2003	:	FROM RECORD
Attorney Docket No. 021238-519	:	

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 14, 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 Teresa Stanek Rea on behalf of herself.

Teresa Stanek Rea has been withdrawn as attorney of record, however all other attorneys remain of record.

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

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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BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

MAILED

MAR 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Fournier et al.	:	DECISION ON PETITION
Application No. 10/740,584	:	TO WITHDRAW
Filed: December 22, 2003	:	FROM RECORD
Attorney Docket No. 021238-453	:	

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 14, 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 Teresa Stanek Rea on behalf of herself.

Teresa Stanek Rea has been withdrawn as attorney of record, however all other attorneys remain of record.

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

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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LEWIS, RICE & FINGERSH, LC
ATTN: BOX IP DEPT.
600 Washington Ave.
Suite 2500
ST LOUIS MO 63101

MAILED
FEB 03 2012
OFFICE OF PETITIONS

In re Application of	:	DECISION ON
PPillon et al.	:	PETITION
Application No.: 10/740911	:	
Filing or 371(c) Date: 12/18/2003	:	
Attorney Docket Number: 191/1944US	:	

This is a decision in response to the Request for Withdrawal of Holding of Abandonment Under 37 C.F.R. § 1.181, filed December 12, 2011.

This Petition to withdraw the holding of abandonment is hereby **granted**.

Background

The above-identified application became abandoned for failure to timely and properly reply to the final office action mailed September 19, 2005. The final office action indicated that no claims were allowed. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on December 20, 2005. A Notice of Abandonment was mailed September 6, 2006.

The present petition

Applicant files the present petition and asserts that a timely reply to the Office action, to wit – a Notice of Appeal and extension of time request and fee, were filed on Monday, May 16, 2011. Applicant files the present petition and an Appeal Brief, and an extension of time request and fee. In support of this assertion, applicant files a copy of the reply.

Analysis and conclusion

A review of Office records reveals that the Office received the Notice of Appeal and Extension of Time request and fee on Monday, May 16, 2011.

Conclusion

In view of the above, the holding of abandonment for failure to timely and properly reply to the final office action is hereby withdrawn. Accord, 35 U.S.C. § 21 and 37 CFR § 1.6.

In view of the above, the holding of abandonment is withdrawn.

The application is being referred to Technology Center Art Unit 3736 for processing of the Appeal brief[1].

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

[1] The time period for filing an Appeal Brief is two months from the date of receipt of the Notice of Appeal. As such, the Appeal brief was also timely filed.

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.
10/740,950	12/18/2003	Rami Caspi	2003P15316US	3364

7590 12/20/2010

Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER
JAMAL, ALEXANDER

ART UNIT	PAPER NUMBER
2614	

MAIL DATE	DELIVERY MODE
12/20/2010	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
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Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
170 Wood Avenue South
Iselin NJ 08830

MAIL

DEC 2 02010

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Caspi, Rami *et al.* :
Application No. 10/740,950 :
Filed: December 18, 2003 :
Attorney Docket No. 2003P15316US :

NOTICE OF WITHDRAWAL
FROM ISSUE
UNDER 37 C.F.R. §1.313

The purpose of this communication is to inform you that the above identified application is being withdrawn from issue pursuant to 37 C.F.R. §1.313.

The above-identified application is hereby withdrawn from issue.

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

Telephone inquiries should be directed to Curtis Kuntz at 571-272-7490.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

John LeGuyader, Director
Technology Center 2600
Communications

CC: Office of Publications:

Patent Clerk, Randolph Square, Room 09D30-B
Supervisory Correspondence Clerk, Randolph Square, 09D33

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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Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
170 Wood Avenue South
Iselin NJ 08830

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Caspi et al.	:	
Application No. 10/740,951	:	DECISION ON PETITION
Filed: December 18, 2003	:	
Attorney Docket No. 2003P15317US	:	

This is a decision on the petition filed January 28, 2011 and February 11, 2011 requesting under 37 CFR 1.182 that the acceptance of the terminal disclaimer filed September 26, 2008 be withdrawn. The $ 400.00 petition fee has been received. This petition also addresses the request for expedited treatment under 37 CFR 1.182.

The petition under 37 CFR 1.182 for expedited treatment is **Granted**.
The petition under 37 CFR 1.182 to withdraw the terminal disclaimer is **Granted**.

Petitioners assert that, as the claims for which the aforementioned terminal disclaimer was originally proffered were not entered, there is no further need for the disclaimer to remain recorded against this application. The undersigned has consulted with the examiner in charge of this application, and has found that the examiner concurs with petitioners' assertion. Accordingly, the terminal disclaimer is withdrawn.

Deposit account 02-4800 will be assessed the $400.00 fee for the expedited petition decision.

This application is being forwarded to the Office of Data Management for correction in the PALM database and file records consistent with this decision.

Telephone inquiries related to this decision should be addressed to the undersigned at (571) – 272-3215

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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
10/740,951	12/18/2003	Rami Caspi	2003P15317US

CONFIRMATION NO. 3369

POA ACCEPTANCE LETTER

88087
Buchanan Ingersoll & Rooney PC (SEN)
P. O. Box 1404
Alexandria, VA 22313-1404

OC000000045960255

Date Mailed: 02/11/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/10/2011.

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.

/crgrant/

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
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/740,951	12/18/2003	Rami Caspi	2003P15317US

CONFIRMATION NO. 3369

POWER OF ATTORNEY NOTICE

Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

OC000000045960254

Date Mailed: 02/11/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/10/2011.

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

/crgrant/

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

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United States Patent and Trademark Office
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Paper No.

TIMOTHY H. VAN DYKE
390 NO. ORANGE AVENUE
SUITE 2500
ORLANDO FL 32801

MAILED

JAN 3 1 2011

OFFICE OF PETITIONS

In re Patent No. 7795497 :
Issue Date: 09/14/2010 :
Application Number: 10/741379 :
Filing or 371(c) Date: 12/19/2003 :
Attorney Docket Number: 10669-044US :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on November 16, 2010.

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

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: FLGR0103PUSP	Patent Number: 7662014
Filing Date (or 371(b) or (f) Date): Dec-19-2003	Issue Date: Feb-16-2010
First Named Inventor: FLEISHMAN, GREG R.	
Title: JOINING SYSTEM FOR POLYHEDRIC MODULES	

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 /John E Nemazi/	Date 13-Aug-2010
Name (Print/Typed) John E. Nemazi	Registration Number 30,876

***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
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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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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

Brooks Kushman P.C. / LA
1000 Town Center
22nd Floor
Southfield, MI 48075

Mail Date: 08/23/2010

Applicant	: Gregg R. Fleishman	: DECISION ON REQUEST FOR
Patent Number	: 7662014	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/741,480	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/19/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1725** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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APPLE INC./BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUITE 300
SUNNYVALE CA 94085-4040

MAILED
JUL 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Stephen Olivier Lamay et al	:	
Application No. 10/741,660	:	DECISION GRANTING PETITION
Filed: December 19, 2003	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 4860P3077	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 22, 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 July 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) 272-3208.

This application is being referred to Technology Center AU 2163 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed 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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OCT 25 2010

OFFICE OF PETITIONS

COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON, DC 20001

In re Application of	:	
Yakovlevsky et al.	:	
Application No. 10/741,861	:	DECISION ON PETITION
Filed: December 19, 2003	:	
Attorney Docket No. ALTH-008/01US 307255-2104	:	

This is a decision on the petition, filed August 16, 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 **GRANTED**.

This application was held abandoned for failure to timely file an appeal brief. A Notice of Abandonment was mailed July 29, 2010.

Petitioner asserts that a notice of appeal was timely filed on January 15, 2010 and that the deadline for filing an appeal brief with a request for a five (5) month extension of time would be August 15, 2010.

A review of the file record indicates that an Office action was mailed July 17, 2009, in response, on January 15, 2010, a notice of appeal including a three (3) month extension of time was filed. Since the time period for filing a reply is extendable under 37 CFR 1.136, the response filed on August 16, 2010, which included a Request for Continued Examination and a five (5) month extension of time is considered as being timely filed.

In view of the above, the holding of abandonment is hereby withdrawn and the application is restored to pending status.

This application is being referred to Technology Center AU 1654 for appropriate action in the normal course of business on the reply filed August 16, 2010.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON, DC 20001

MAILED
JUN 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Yakovlevsky et al.	:	
Application No. 10/741,861	:	DECISION ON PETITION
Filed: December 19, 2003		TO WITHDRAW FROM RECORD
Attorney Docket No. ALTH-008/01US	:	
307255-2104	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 9, 2011.

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

A review of the file record indicates that on May 27, 2011 the power of attorney to Cooley LLP was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: WILSON, SONSINI, GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: ITL.1528US (P17890)	Patent Number: 7,669,203
Filing Date (or 371(b) or (f) Date): 12-19-2003	Issue Date: 02-23-2010
First Named Inventor: Nicholas G. Samra	
Title: VIRTUAL MULTITHREADING TRANSLATION MECHANISM INCLUDING RETROFIT CAPABILITY	

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 /Erik Metzger/	Date 7/8/10
Name (Print/Typed) Erik Metzger	Registration Number 53,320

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

(Not to be Submitted to the USPTO)

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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.

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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).

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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TROP, PRUNER & HU, P.C.
1616 S. VOSS ROAD, SUITE 750
HOUSTON, TX 77057-2631

Mail Date: 09/14/2010

Applicant	: Nicholas G. Samra	: DECISION ON REQUEST FOR
Patent Number	: 7669203	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/741,914	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/19/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1596** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/18/10

TO SPE OF : ART UNIT 2629

SUBJECT : Request for Certificate of Correction for Appl. No.: 10741952 Patent No.: 7492351

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

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: N/A

/Sumati Lefkowitz/ SPE — 2629 Art Unit

PAGE 2/3 * RCVD AT 1/26/2011 3:08:54 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/0 * DNIS:2709990 * CSID:USPTO * DURATION (mm-ss):00-00

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2-10-2012

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P.O. Box 1450
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www.uspto.gov

Patent No. : 7,181,836 B2
Serial No. : 10/742,036
Inventor(s) : Loucas Tsakalakos
Issued : February 27, 2007

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 error in column 1, line 10 is printed in accordance with the record. No words purported to be in column 1, line 10 cannot be found in the printed patent.

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

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch. Any response must be filed within a four week period with the sum of $100. 00

Eva James
For Mary Diggs
Decisions & Certificate
of Correction Branch
(571-272-3422 or 703-756-1580)

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

ej

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

Hultquist IP
P.O. Box 14329
RESEARCH TRIANGLE PARK NC 27709

MAILED
MAR 12 2012
OFFICE OF PETITIONS

In re Patent No. 7,702,418 :
Issue Date: April 20, 2010 :
Application No. 10/742,125 : DECISION DISMISSING AS MOOT
Filed: December 19, 2003 : PETITION UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2771-522-CIP2 :

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed February 26, 2012, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for benefit of priority to the prior-filed application listed in the petition.

The petition is **DISMISSED AS MOOT**.

While a reference to the prior-filed nonprovisional application was not included in an Application Data Sheet (ADS) or in the first sentence of the specification following the title as required by the rules, a reference, nevertheless, was made in the transmittal letter filed with the application.

Where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). On the other hand, if the USPTO does not note the claim for priority to the prior-filed applications set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(3).[1] In the present case, the Office noted the claim for priority to the prior-filed application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt mailed April 2, 2004.

In view of the above, the $1,410 surcharge submitted is unnecessary and will be credited to petitioners' credit card in due course.

Petitioners must file a Certificate of Correction to formalize the priority claim. *See* MPEP 1481.

[1] Note MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

However, petitioners must **not** include an incorporation by reference statement of Application No. 09/880,472 in the Certificate of Correction. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (see 35 U.S.C. § 132(a)). *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980).

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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MAILED

SEP 10 2010

OFFICE OF PETITIONS

EDWARDS LIFESCIENCES CORPORATION
LEAGL DEPARTMENT
ONE EDWARDS WAY
IRVINE, CA 92614

In re Application of	:	
Robert Stobie et al	:	
Application No. 10/742,215	:	ON PETITION
Filed: December 19, 2003	:	
Attorney Docket No. ECV-5606CIPDIVCON	:	

This is a decision on the petition filed July 14, 2010 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 March 9, 2010, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on June 10, 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 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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MAILED
SEP 16 2011
OFFICE OF PETITIONS

BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

In re Application of :
Kennedy et al. :
Application No. 10/742,291 :
Filed: December 19, 2003 :
Attorney Dkt. No. 20150-204932 :
For: FOLATE TARGETED ENHANCED :
TUMOR AND FOLATE RECEPTOR :
POSITIVE TISSUE OPTICAL IMAGING :
TECHNOLOGY

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 (d)" filed September 7, 2011. In light of the submission of this request with the issue fee and prior to the issuance of the patent, this request is properly treated under 37 CFR 1.705(b). Applicants request that the determination of patent term adjustment be corrected from eighty-nine (89) days to eight hundred eighty-eight (888) days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

The $200.00 petition fee set forth in 37 CFR 1.18(e) has been assessed. No additional fees are required.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of

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

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

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

---

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

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

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

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

Charlema Grant
Attorney Advisor
Office of Petitions

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.
10/742,291	12/19/2003	Michael D. Kennedy	20150-204932	5677

7590 09/23/2011
BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS, IN 46204

EXAMINER
SANG, HONG

ART UNIT	PAPER NUMBER
1643	

NOTIFICATION DATE	DELIVERY MODE
09/23/2011	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

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September 21, 2011

BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

In re Application of	:	
Michael D. Kennedy et al.	:	**DECISION ON PETITION**
Application No. 10742291	:	
Filed: 12/19/2003	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **20150-204932**	:	***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) December 19, 2003.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/742,455	12/18/2003	Finn Gramnas	OSSUR.047A	4400

20995 7590 07/08/2011
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER
WILLSE, DAVID H

ART UNIT	PAPER NUMBER
3738	

NOTIFICATION DATE	DELIVERY MODE
07/08/2011	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):

jcartee@kmob.com
efiling@kmob.com
eOAPilot@kmob.com

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

In re Application of: GRAMNAS, FINN et al Serial No. 10/742,455 Filed: Dec. 18, 2003 Docket: OSSUR.047A Title: MEDICAL MEASURING DEVICE	DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the petition filed June 28, 2011 under 37 CFR 1.181 requesting withdrawal of the finality of the last Office action mailed April 28, 2011.

The petition is **Granted.**

In finding petitioner's points of argument persuasive, the requested relief is granted. The finality of the last Office action mailed April 28, 2011 is hereby withdrawn. The Office action mailed on April 28, 2011 has been designated as non-final Office action. Since the finality is being withdrawn, any amendment filed in response to the Office action of April 28, 2011 will be treated as a 37 CFR § 1.111 amendment. The period to respond to the last Office action of April 28, 2011 remains unchanged.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of the Art Unit 3738 awaiting the applicant's response to the last Office action. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED.

Angela D. Sykes, Director
Technology Center 3700

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AUG 23 2010

OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 7,763,179	:	DECISION ON REQUEST
Levy, et al.	:	FOR
Issue Date: July 27, 2010	:	RECONSIDERATION OF
Application No. 10/742,510	:	PATENT TERM ADJUSTMENT
Filed: December 19, 2003	:	and
Atty. Docket No. P0904D	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on August 4, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, eight hundred and twenty-six (1,826) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and seventy-one(1,471) days[1] is **GRANTED to the extent indicated herein.**

---

[1] The period of overlap between the "A" delay and the "B" delay is 0 days, not 245 days as patentees state. It is noted that, in this case where no Request for Continued Examination was filed, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A) is the entire period during which the application was pending before the Office, from the filing date of the application to the issue date of the patent, excluding periods during which the application was under appeal. It is further noted that "A" delays and "B" delays overlap only if such delays occur on the same calendar day. The relevant period of "B" delay began August 11, 2008, and ended July 27, 2010. There is no period of "A" delay and "B" delay that occur on the same calendar day. Thus, the period of overlap between the "A" delay and the "B" delay is 0 days.

It is noted that patentees failed to account for the filing of the notices of appeal on May 1, 2008, and April 21, 2009. The Office reminds patentees that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the periods consumed by appellate review is 600 days, beginning on the date on which the notices of appeal to the Board of Patent Appeals and Interferences were filed, May 1, 2008, and April 21, 2009, and ending on January 22, 2009--the non-final Office Action—and March 19, 2010—the date the Notice of Allowance was mailed, respectively. Thus, the B delay is 716 days (1,316 - 600). Accordingly, the patent term adjustment is 1,471 days (913 days of A delay + 716 days of B delay - 0 days of overlap - 158 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 receipt of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand four hundred and seventy-one **(1471)** days.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,763,179 B2

DATED : Jul. 27, 2010

INVENTOR(S) : Levy 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 (1473) days

Delete the phrase "by 1473 days" and insert – by 1471 days--

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SEP 23 2010

OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 7,763,179	:	DECISION ON REQUEST
Levy, et al.	:	FOR
Issue Date: July 27, 2010	:	RECONSIDERATION OF
Application No. 10/742,510	:	PATENT TERM ADJUSTMENT
Filed: December 19, 2003	:	
Atty. Docket No. P0904D	:	
	:	

This is a decision on the petition filed on September 3, 2010, 2010, which is being treated as a renewed petition under 37 CFR 1.705(d).

This renewed petition is **DISMISSED**.

An original petition was submitted on August 4, 2010. The original petition was treated as a petition under 37 CFR 1.705(d), and a decision was mailed on August 23, 2010, which granted the petition to the extent that the patent term adjustment was corrected to indicate that the term of the above-identified patent will be extended or adjusted by one thousand, four hundred and seventy-one (1,471) days.

Patentees now file this renewed petition and assert that it is improper for the USPTO to exclude from the "B" delay adjustment under 35 U.S.C. 154(b)(1)(B) the period from the filing of a Notice of Appeal to either the filing of a Request for Continued Examination, Office action under 35 USC 132 or Notice of Allowance, or a decision by the Board of Patent Appeals and Interferences appellate review period that was excluded from the "B".

Pursuant to 35 U.S.C. § 154(B)(ii), the Office is required to reduce the three-year application pendency guarantee by "any time consumed by appellate review by the Board of Patent Appeals and Interferences." As such, the Office is required to reduce any accorded "B" delay by the entire 600 days which were consumed by Appellate review.

It follows that the decision to extend or adjust the patent term adjustment by one thousand, four hundred and seventy-one (1,471) days is in accordance with Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010), as interpreted by the United States Court of Appeals for the Federal Circuit.

Contrary to patentees' assertion, it is further noted that there is no period of adjustment for "C" delay because there was no successful appeal in which the Board of Patent Appeals and Interferences reversed the examiner as to any previously rejected claim.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and seventy-one (1,471) days.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,763,179 B2

DATED : Jul. 27, 2010

INVENTOR(S) : Levy 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 (1473) days

Delete the phrase "by 1473 days" and insert – by 1471 days--

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ATTN: LEGAL DEPARTMENT
THE LANDMARK @ ONE MARKET
STREET
SUITE 300
SAN FRANCISCO CA 94105

MAILED
JAN 11 2012
OFFICE OF PETITIONS

In re Application of	:	
Shkvarchuk et al.	:	DECISION ON PETITION
Application No. 10/742,513	:	
Filed: December 19, 2003	:	
Atty Docket No. SALE 1012-1/	:	
205US	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed December 22, 2011.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed May 2, 2011. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply filed and no extension of time obtained, the application became abandoned effective August 3, 2011. A courtesy Notice of Abandonment was mailed on December 8, 2011.

The petition includes the required reply, the statement of unintentional delay and payment of the petition fee. No terminal disclaimer is required.

Given the revocations of power of attorney filed in this application in 2011, 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.

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 was submitted subsequent to the maximum extendable period for reply, this fee is unnecessary and is being refunded.

Technology Center AU 2447 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed December 22, 2011.

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

MAILED

MAY 23 2011

OFFICE OF PETITIONS

In re Application of
Jonathan S. Stinson
Application No. 10/742,943
Filed: December 23, 2003
Attorney Docket No. 792-148-DIV

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 12, 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 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 Daniel A. Scola, Jr. on behalf of all the practitioners of record associated with Customer Number 23869.

Customer Number 23869 has been withdrawn as attorney from record. Applicant is reminded that there is no attorney of record at this time.

As no change of correspondence address was indicated therefore, the address will remain unchanged.

There are no outstanding Office actions that require a reply.

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-Collier

Alicia Kelley-Collier
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 NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/742,943	12/23/2003	Jonathan S. Stinson	792-148-DIV

CONFIRMATION NO. 7136

23869
HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

POWER OF ATTORNEY NOTICE

OC000000047811884

Date Mailed: 05/23/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/12/2011.

- 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.

/atkelley-collier/

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

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United States Patent and Trademark Office
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LAW OFFICES OF JOHN A. PARRISH
SUITE 300
TWO BALA PALZA
BALA CYNWYD, PA 19004

MAILED
FEB 25 2011
OFFICE OF PETITIONS

In re Application of
Sung Mook Choi, et al.
Application No. 10/743,056
Filed: December 23, 2003
Attorney Docket No. DKC 1120

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 21, 2011, to revive the above-identified application.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 14, 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 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 an amendment, (2) the petition fee of $1620, 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 1742 for appropriate action by the Examiner in the normal course of business on the reply received January 21, 2011.

April M. Wise
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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ALLISON JOHNSON, P.A.
3500 AMERICAN BLVD. W., SUITE 690
MINNEAPOLIS MN 55431

In re Patent of Wehling et al.	:	DECISION ON REQUEST
Patent No. 7,815,897	:	FOR
Issue Date: October 19, 2010	:	RECONSIDERATION OF
Application No. 10/743,118	:	PATENT TERM ADJUSTMENT
Filed: December 22, 2003	:	and
Atty Docket No. 208-015US1	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 28, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand nine hundred nine (1909) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand nine hundred nine (1909) days is **GRANTED**.

The sole issue pertains to the three years to issue guarantee of 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) (hereinafter, "B delay").

The period of B delay in this case is 276 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. No RCE was filed in this case. The maximum period of B Delay in this case is 1397 days, which is the number of days beginning on December 23, 2006, the day after the date three years after the application's filing date, and ending on October 19, 2010, the date of patent issuance.

As stated in 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." Excluding the 1121 days

consumed by appellate review results in a period of B delay of 276 days (1397 - 1121).

In light of the above, the patent term adjustment is 1909 days, which is the sum of 546 days of A delay and 276 days of B delay and 1121 days of C delay, reduced by 34 days of applicant delay.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e).

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand nine hundred nine (1909)** days.

Telephone inquiries 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 : 7,815,897 B1

DATED : **October 19, 2010** **DRAFT**

INVENTOR(S) : Wehling 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 1690 days

Delete the phrase "by 1690 days" and insert – by 1909 days--

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SEP 09 2011
OFFICE OF PETITIONS

KEITH FRANTZ
401 WEST STATE STREET
SUITE 200
ROCKFORD IL 61101

In re Patent No. 7,047,669	:	
Issue Date: May 23, 2006	:	
Application No. 10/743,607	:	ON PETITION
Filed: December 22, 2003	:	
Attorney Docket No.	:	

This is a decision on the petition under 37 CFR 1.378(c), filed August 19, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on May 24, 2010, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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 fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address 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 Kimberly Inabinet at (571) 272-4618.

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Norma E. Polcek
1019 Brae Burn Lane
Rockford, IL 61107

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SEP 01 2010

OFFICE OF PETITIONS

In re Application of David G. Bell et al. :
Application No. 10/744,022 :
Filing Date: December 23, 2003 :
Attorney Docket No. 1508/3820 (D/A2122) :

On Application For
Patent Term Adjustment

This is in response to the "Application for Patent Term Adjustment Under 37 C.F.R. § 1.705(b)" filed April 13, 2010. Applicants submit the correct patent term adjustment to be indicated on the patent is eighty-eight (88) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term 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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UNISYS CORPORATION
OFFICE OF THE GENERAL COUNSEL
801 LAKEVIEW DRIVE, SUITE 100
MAILSTOP: 2NW
BLUE BELL PA 19422

MAILED

OCT 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Philip M. HOFFAMN et al.	:	
Application No. 10/744,111	:	DECISION ON PETITION
Filed: December 23, 2003	:	
Attorney Docket No. TN301B	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner within one (1) month of the Notification of Non-Compliance mailed February 18, 2010. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 19, 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. Accordingly, the reply to the Notification of Non-Compliance of February 18, 2010 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 3695 for appropriate action by the Examiner in the normal course of business on the reply received.

Michelle R. Eason

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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ROBERT W. STROZIER
P.O. BOX 429
BELLAIRE TX 77402-1450

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FEB 07 2011

OFFICE OF PETITIONS

In re Patent No. 7,134,455	:	
Issued: November 14, 2006	:	
Application No. 10/744,575	:	ON PETITION
Filed: December 22, 2003	:	
Attorney Docket No. 99014/03UTL	:	

This is a decision on the petition under 37 CFR 1.378(c), filed December 21, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on November 15, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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SEP 13 2010

OFFICE OF PETITIONS

JOHN C. STRINGHAM
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

In re Patent No. 7,427,930	:	
Issue Date: September 23, 2008	:	
Application No. 10/744,686	:	ON PETITION
Filed: December 23, 2003	:	
Attorney Docket No. 15455.2.1	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 28, 2011

TO SPE OF : ART UNIT 3636

SUBJECT : Request for Certificate of Correction for Appl. No.: 10744738 Patent No.: 7300121

CofC mailroom date: Nov. 30, 2007

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
703-756-1814

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: _____

DAVID DUNN
SUPERVISORY PATENT EXAMINER

1/31/2011

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WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402

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SEP 12 2011
OFFICE OF PETITIONS

In re Patent No. 7,136,288
Issue Date: November 14, 2006
Application No. 10/745,167
Filed: December 23, 2003
Attorney Docket No. F48.12-0002

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed August 23, 2011.

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.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Steven Koehler 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.

Inquiries related to this communication 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
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

MAILED
JUL 19 2011
OFFICE OF PETITIONS

In re Patent of Ueno et al.	:	
Patent No. 7,795,312	:	DECISION ON REQUEST
Issue Date: September 14, 2010	:	FOR RECONSIDERATION OF
Application No. 10/745,689	:	PATENT TERM ADJUSTMENT
Filing Date: December 29, 2003	:	
Attorney Docket No. Q79198	:	

This is a decision on the petition under 37 C.F.R. § 1.705(d) filed November 12, 2010, which requests the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by 325 days.

The petition is **dismissed**.

The patent issued with a patent term adjustment determination of 263 days. Patentees assert the correct patent term adjustment is 325 days. Patentees' assertion is based on an argument the correct period of delay under 37 C.F.R. § 1.704(b) ("B Delay") is 205 days, not 143 days as calculated by the Office.

The petition was filed within two months of the issue date of the patent and includes the $200 fee set forth in 37 C.F.R. § 1.18(e).

Relevant Background Facts

On November 22, 2006, the Office mailed a final Office action.

On May 10, 2007, Patentees filed an amendment.

On May 22, 2007, Patentees filed a Notice of Appeal.

On June 19, 2007, the Office mailed an Advisory Action addressing the May 10, 2007 amendment.

On July 23, 2007, Patentees filed a request for continued examination ("RCE").

Discussion

The issue raised by the petition is as follows:

> Does the period of B Delay include the 62-day time period beginning May 22, 2007, the date the Notice of Appeal was filed, and ending July 22, 2007, the day before the date the RCE was filed?

Patentees contend the 62-day time period is part of the period of B Delay because the 62-day time period was not time consumed by appellate review. The Office respectfully disagrees.

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 ... or by a Federal court ..., 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 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 the phrase "appellate review by the Board" set forth in 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 "appellate review by the Board" in 35 U.S.C. § 154 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 period of appellate review to be excluded from the period of B Delay begins when a notice of appeal is filed.

In view of the prior discussion, the Office acted properly when the Office excluded the 62-day time period beginning May 22, 2007, and ending July 22, 2007, from the period of B Delay.

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

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Mara E. Liepa
Merchant & Gould P.C.
P.O. Box 2903
Minneapolis MN 55402-0903

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OCT 14 2010

OFFICE OF PETITIONS

In re Application of	:	
Conrad H. Barski, et al.	:	
Application No. 10/745,759	:	DECISION ON PETITION
Filed: December 23, 2003	:	
Attorney Docket No. **13342.21US01**	:	

This is a decision on the petition under 37 CFR 1.182, filed, April 23, 2010, to change the name of the listed inventors to their full names.

The petition is **GRANTED**.

Office records have been updated to reflect the inventor's full name. A corrected Filing Receipt, which reflects the inventor's full name, accompanies this decision on petition.

Any questions concerning this matter may be directed to Terri Johnson at (571) 272-2991. Any questions concerning the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3626 for examination in due course.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/745,759	12/23/2003	3626	1053	13342.21US01	25	9

CONFIRMATION NO. 2851

CORRECTED FILING RECEIPT

Mara E. Liepa
Merchant & Gould P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903

OC000000043975534

Date Mailed: 10/13/2010

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)

Conrad H. Barski, Minneapolis, MI;
John M. Starmer, Minneapolis, MN;
Ingrid R. Svensson, Plymouth, MN;
Stephen R. Claypool, Minneapolis, MN;
Robert A. Duke, Maplewood, MN;
Steve J. Swenson, Lakeville, MN;
Ying Ching Yu, Roseville, MN;
Peter E. Crist, Rockford, MN;
Linda Peitzman, Eden Prairie, MN;
David Del Toro, Woodbury, MN;

Power of Attorney:

John Gould--18223
Robert Edell--20187
Paul Welter--20890
Homer Knearl--21197
Sheldon Cohen--22174
Roger Frost--22176
Ronald Daignault--25968
Charles Golla--26896
Douglas Williams--27054
Albert Underhill--27403

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 04/07/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/745,759**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
Title

NATURALLY EXPRESSED MEDICAL PROCEDURE DESCRIPTIONS GENERATED VIA SYNCHRONIZED DIAGRAMS AND MENUS

Preliminary Class

705

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PILLSBURY WINTHROP SHAW PITTMAN LLP (SV)
P.O. BOX 10500
MCLEAN VA 22102

MAILED
SEP 29 2011
OFFICE OF PETITIONS

In re Application of	:	
Matthew C. Wilkinson et al.	:	
Patent No. 7,261,795	:	
Issued: August 28, 2007	:	NOTICE
Application No. 10/745,953	:	
Filed: December 24, 2003	:	
Attorney Docket No. **015126-0307435 AVI-7240**	:	

This is a notice regarding your request filed August 31, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

This 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) 272-4584.

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
www.uspto.gov

POWER SYSTEMS MANUFACTURING
1440 WEST INDIANTOWN ROAD
SUITE 200
JUPITER FL 33458

MAILED
JAN 20 2011
OFFICE OF PETITIONS

In re Patent No. 7,082,770 :
Issue Date: August 1, 2006 :
Application No. 10/746,310 :
Filed: December 24, 2003 :
Attorney Docket No. PSM-076 :

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed October 18, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on August 2, 2010 for failure to pay the 3.5 year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is noted that petitioner has provided the 7.5 year maintenance fee. However review of the record shows that the 3.5 year maintenance fee is required. The submission of the 7.5 year maintenance fee is premature. Accordingly the fee required is $980 3.5 maintenance fee and the surcharge of $1640. Thus $1500 will be refunded.

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

/Charlema Grant/

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAR 01 2012
OFFICE OF PETITIONS

VAN DYKE, GARDNER, LINN & BURKHART, LLP
SUITE 207
2851 CHARLEVOIX DRIVE, S.E.
GRAND RAPIDS MI 49546

In re Application of	:	
James B. Blackburn	:	
Application No. 10/746,842	:	ON PETITION
Filed: December 24, 2003	:	
Attorney Docket No. WIL06 P-101	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 15, 2011, 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 respond to the decision from the Office of Petitions mailed on December 30, 2004. The decision set a period of TWO MONTHS from the mail date of the decision on December 30, 2004. A Notice of Abandonment was mailed on August 24, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

As to item (3), the Office requires additional information as to the extended period of delay:

1) There is no assignee in the above application. Therefore, the decision on the petition under 37 CFR 1.47(b) to accept the application without an executed declaration was properly dismissed on December 30, 2004.

2) As to excerpts # 11 and # 13 taken from the third party submission (STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR (37 CFR §1.47b):

11. On or about November 1, 2003, David Bibler contacted James Blackburn to obtain his signature on a patent application assignment and a Declaration/Power of Attorney, but James Blackburn refused to sign any formal papers.

13. Repeated attempts have been made by David Bibler to obtain a signature from James Blackburn for the formal papers for the present application. Each time James Blackburn has refused to sign any papers relating to the patent application.

3) The applicant is not having to make any changes in substance to the application, and therefore applicant is effectively admitting that the prepared application was accurate as to what applicant's invention was, and the Office know that applicant was aware that such had been filed.

The above, clearly indicates that the applicant was fully aware that this application had been filed in his name and that he was asked to sign the declaration. It appears that the inventor refused to sign on multiple occasions.

In view of the above, a full explanation of the delay between the contacts and the abandonment in 2004, and the filing of this petition was unintentional is necessary. Further, more explanation of the statements made in the earlier petition (October 15, 2004) by the third party regarding applicant being contacted and refusing to sign the declaration. Applicant needs to explain how his knowledge, based on the other statements, until now is unintentional, or at the very least go on the record and refute the statements that he was ever contacted and made aware of the application.

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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 23,2011

In re Application of :

Amr Salahieh

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10746872

Filed : 23-Dec-2003

Attorney Docket No : S63.2B-15134-US01

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed November 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 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 3738 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	10746872
Filing Date	23-Dec-2003
First Named Inventor	Amr Salahieh
Art Unit	3738
Examiner Name	CHRISTOPHER PRONE
Attorney Docket Number	S63.2B-15134-US01
Title	LOCKING HEART VALVE ANCHOR

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	/Martha J. Engel/
Name	Martha J. Engel
Registration Number	61534

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 2, 2012

In re Application of :

Amr Salahieh

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10746872

Filed : 23-Dec-2003

Attorney Docket No : S63.2B-15134-US01

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed February 2, 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 3738 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	10746872
Filing Date	23-Dec-2003
First Named Inventor	Amr Salahieh
Art Unit	3738
Examiner Name	CHRISTOPHER PRONE
Attorney Docket Number	S63.2B-15134-US01
Title	LOCKING HEART VALVE ANCHOR

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	/Martha J. Engel/
Name	Martha J. Engel
Registration Number	61534

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2-15-11

TO SPE OF : ART UNIT 1614

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/746,930 Patent No.: 6949554

CofC mailroom date: 2-9-11

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

Connie Yawb
Certificates of Correction Branch
703-756-1814 _____

Thank You For Your Assistance

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

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

Comments: The claims submitted 2/9/2011 (@ col. 28, Line 14; claims 1-17) entered as per Ex. Amdt. dated 5/9/2005.

Ardin H. Marschel
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER
SPE

1614
Art Unit

OK To Enter
3/3/2011
/R.J.H./

PATENT
ATTORNEY DOCKET NO. 50758/011004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Snutch et al.	Confirmation No.:	2659
Serial No.:	10/746,932	Art Unit:	1614
Filed:	December 23, 2003	Examiner:	Raymond J. Henley III
Patent No.:	6,949,554	Customer No.:	98363
Issued:	September 27, 2005		
Title:	CALCIUM CHANNEL BLOCKERS COMPRISING TWO BENZHYDRIL MOIETIES		

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.322

Applicants hereby request that a second Certificate of Correction be issued in the patent identified above. The errors to be corrected are described in detail on the second Form PTO 1050 submitted herewith.

Applicants note that a first Request for a Certificate of Correction and a first Form PTO 1050 was filed on November 4, 2008. The Office issued a Certificate of Correction that included pages 1-3 of the first Form PTO 1050 but excluded pages 4-6. The second Form PTO 1050, submitted herewith, recites the content of these excluded pages.

No fee is believed to be due, as the errors to be corrected were made by the PTO. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: 2/9/11

Michael J. Belliveau, Ph.D.
Reg. No. 52,608

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045

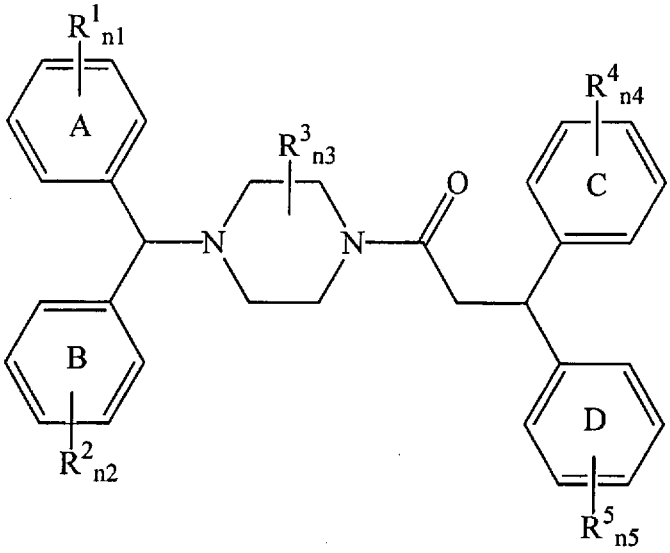
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. 6,949,554
DATED September 27, 2005
INVENTORS Snutch et al.

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

At column 28, line 14, please insert the following claims:

1. A method to treat a condition selected from the group consisting of pain, stroke, epilepsy, anxiety and depression in a subject, which method comprises administering to a subject in need of such treatment an amount of a compound of formula (1) effective to treat said condition wherein said compound of formula (1) is:



(1)

or a pharmaceutically acceptable salt thereof

MAILING ADDRESS OF SENDER:
Michael J. Belliveau, Ph.D.
Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Customer No.: 98363

PATENT NO. 6,949,554
NO. ADDITIONAL COPIES
@ 50¢ PER PAGE

SUBSTITUTE FORM PTO 1050

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

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:

wherein each R^1-R^5 is independently optionally substituted alkyl (1-10C), alkenyl (2-10C), alkynyl (2-10C), aryl (6-10C), alkylaryl (7-16C) or alkenylaryl (7-16C) each optionally further containing 1-4 heteroatoms (N, O or S) and wherein said optional substituents may include =O; or

each of R^1-R^5 is independently halo, NO_2, SO, SO_2, SO_2NH_2, -OH, SH or NH_2, and wherein R^3 may be keto if $n^3 = 1$; and

wherein two substituents on adjacent positions of the same ring may form a 3-7 membered saturated or unsaturated ring fused to said substituted ring, said fused ring itself optionally substituted and optionally containing one or more heteroatoms (N, S, O); or

wherein a combination of R^1 and R^2 and/or R^4 and R^5 may form a bond or a bridge between phenyl groups A and B and/or C and D; and

wherein each n^1-n^5 is independently 0-4.

2. The method of claim 1 wherein each of R^1, R^2, R^4 and R^5 is independently halo, or is optionally heteroatom containing and/or

---

MAILING ADDRESS OF SENDER:
Michael J. Belliveau, Ph.D.
Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Customer No.: 98363

PATENT NO. 6,949,554
NO. ADDITIONAL COPIES
@ 50¢ PER PAGE

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

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:

optionally substituted alkyl, alkenyl, aryl, arylalkyl, arylalkenyl, or phenoxy.

3. The method of claim 1 wherein R^1 and R^2 and/or R^4 and R^5 form a bridge of 1-3 members.

4. The method of claim 1 wherein R^3 is COOH or an alkyl ester thereof.

5. The method of claim 1 wherein all of n^1-n^5 are 0.

6. The method of claim 1 wherein one of n^1-n^5 is 1 and the other n are 0.

7. The method of claim 1 wherein one of n^1-n^5 is 2 and the other n are 0.

8. The method of claim 1 wherein one of n^1-n^5 is 3 and the other n are 0.

9. The method of claim 1 which is compound P1-P36 in Figure 1 or a salt thereof.

MAILING ADDRESS OF SENDER:
Michael J. Belliveau, Ph.D.
Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Customer No.: 98363

PATENT NO. 6,949,554
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. 6,949,554
DATED September 27, 2005
INVENTORS Snutch et al.

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

10. The method of claim 1 wherein the condition is pain.

11. The method of claim 1 wherein the condition is stroke.

12. The method of claim 1 wherein the condition is epilepsy.

13. The method of claim 1 wherein the condition is anxiety or depression.

14. The method of claim 5 wherein the condition is pain.

15. The method of claim 5 wherein the condition is stroke.

16. The method of claim 5 wherein the condition is epilepsy.

17. The method of claim 5 wherein the condition is anxiety or depression.

MAILING ADDRESS OF SENDER:
Michael J. Belliveau, Ph.D.
Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Customer No.: 98363

PATENT NO. 6,949,554
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UNITED STATES PATENT AND TRADEMARK OFFICE

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NSIP LAW
P.O. Box 34688
Washington DC 20043

MAILED
FEB 14 2012
OFFICE OF PETITIONS

In re Application of	:	
Moon et al.	:	
Application No. 10/747,139	:	ON APPLICATION FOR
Filed: December 30, 2003	:	PATENT TERM ADJUSTMENT
Docket No. 1101.0102C	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT DETERMINATION, filed January 31, 2012. The petition will be treated under 37 CFR 1.705(b). Applicants submit that the initial determination of patent term adjustment should be seven hundred ninety-two (792) days, not zero (0) days as calculated by the Office as of the mailing of the Determination of Patent Term Adjustment under 35 U.S.C. 1.54(b).

The request for review of the determination of patent term adjustment (PTA) 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 **seven hundred ninety-two (792) days.** A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 31, 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 is 0 days. On January 31, 2012, applicants submitted the instant petition. Applicants argue the Office failed to enter a reduction pursuant to 37 CFR 1.702(a)(1) for Office delay in mailing at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application was filed.

Applicants state that the application is subject to a number of terminal disclaimers.

Applicants argue pursuant to 37 CFR 1.702(a)(1), the Office should be charged with a 1004 day adjustment for the 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 was filed. The Office concurs. The application was filed on December 30, 2003. On November 29, 2007, the Office mailed non-final Office action.

The Office will be charged a 1004 day adjustment pursuant to 37 CFR 1.702(a)(1), beginning on March 1, 2005, the day after 14 months after the application was filed, and ending on November 29, 2007, the date the first notification, a non-final Office action, was mailed.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **seven hundred ninety-two (792) days** (1004 days of Office delay - 212 days of Applicant delay).

The Office acknowledges receipt of the required $200.00 fee under 37 CFR 1.18(e) is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR screen

10/747,139	RECORDING MEDIUM FOR STORING INFORMATION FOR STILL PICTURE, RECORDING AND/OR REPRODUCING METHOD AND APPARATUS THEREFOR	1101.0102C	02-08-2012::09:21:21

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/747,139

Filing or 371(c) Date:	12-30-2003	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	0
A Delays:	0	PTO Manual Adjustments:	1004
B Delays:	0	Applicant Delays:	212
C Delays:	0	Total PTA Adjustments:	792

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
161	02-08-2012	Adjustment of PTA Calculation by PTO	1004		0
138	10-31-2011	Mail Notice of Allowance			0
137	10-26-2011	Office Action Review			0
136	10-26-2011	Office Action Review			0
135	10-26-2011	Issue Revision Completed			0
134	10-26-2011	Notice of Allowance Data Verification Completed			0
133	10-26-2011	Document Verification			0
132	10-22-2011	Reasons for Allowance			0
131	10-22-2011	Allowability Notice			0
129	10-20-2011	Information Disclosure Statement considered			0
128	10-20-2011	Information Disclosure Statement (IDS) Filed			0
127	10-20-2011	Information Disclosure Statement (IDS) Filed		84	123
126	10-21-2011	Date Forwarded to Examiner			0
125	10-20-2011	Supplemental Response			0
124	08-08-2011	Date Forwarded to Examiner			0
123	07-28-2011	Response after Non-Final Action			0
122	04-28-2011	Electronic Review			0
121	04-28-2011	Email Notification			0

120	04-28-2011	Mail Non-Final Rejection		0
119	04-25-2011	Non-Final Rejection		0
118	02-16-2011	Date Forwarded to Examiner		0
117	02-11-2011	Response after Non-Final Action		0
116	12-10-2010	Miscellaneous Incoming Letter		0
115	11-12-2010	Electronic Review		0
114	11-12-2010	Email Notification		0
113	11-10-2010	Email Notification		0
112	11-12-2010	Mail Non-Final Rejection		0
111	11-10-2010	Mail Examiner Interview Summary (PTOL - 413)		0
110	11-08-2010	Non-Final Rejection		0
109	04-06-2010	Examiner Interview Summary Record (PTOL - 413)		0
105	10-13-2010	Information Disclosure Statement considered		0
104	10-13-2010	Reference capture on IDS		0
103	10-13-2010	Information Disclosure Statement (IDS) Filed	49	99
102	10-13-2010	Information Disclosure Statement (IDS) Filed		0
101	10-07-2010	Case Docketed to Examiner in GAU		0
100	09-01-2010	Date Forwarded to Examiner		0
99	08-25-2010	Response after Non-Final Action		0
98	05-25-2010	Mail Non-Final Rejection		0
97	05-23-2010	Non-Final Rejection		0
96	04-13-2010	Mail Examiner Interview Summary (PTOL - 413)		0
95	04-06-2010	Examiner Interview Summary Record (PTOL - 413)		0
94	04-06-2010	Miscellaneous Incoming Letter		0
93	03-25-2010	Mail Advisory Action (PTOL - 303)		0

92	03-24-2010	Advisory Action (PTOL-303)		0
91	03-05-2010	Amendment after Final Rejection		0
90	03-06-2010	Date Forwarded to Examiner		0
89	03-05-2010	Amendment after Final Rejection		0
88	01-06-2010	Mail Final Rejection (PTOL - 326)		0
87	01-04-2010	Final Rejection		0
80	12-07-2009	Change in Power of Attorney (May Include Associate POA)		0
79	11-30-2009	Correspondence Address Change		0
78	10-27-2009	Date Forwarded to Examiner		0
77	09-25-2009	Response after Non-Final Action		0
76	06-25-2009	Mail Non-Final Rejection		0
75	06-22-2009	Non-Final Rejection		0
74	04-06-2009	Certified Translation of Foreign Priority Document		0
73	04-06-2009	Certified Translation of Foreign Priority Document		0
72	04-18-2009	Date Forwarded to Examiner		0
71	04-06-2009	Response after Non-Final Action		0
70	01-06-2009	Mail Non-Final Rejection		0
69	01-05-2009	Non-Final Rejection		0
68	10-14-2008	Date Forwarded to Examiner		0
67	09-24-2008	Response after Non-Final Action		0
66	06-25-2008	Mail Notification of Terminal Disclaimer - Accepted		0
65	06-25-2008	Mail Non-Final Rejection		0
64	06-23-2008	Non-Final Rejection		0
63	05-16-2008	Terminal Disclaimer Filed	79	54
62	05-28-	Date Forwarded to Examiner		0

	2008		
61	05-16-2008	Supplemental Response	0
58	05-20-2008	PARALEGAL OR ELECTRONIC TERMINAL DISCLAIMER APPROVED	0
57	05-20-2008	Notification of Terminal Disclaimer - Accepted	0
56	05-16-2008	Terminal Disclaimer Filed	0
55	03-15-2008	Date Forwarded to Examiner	0
54	02-27-2008	Response after Non-Final Action	0
53	11-29-2007	Mail Notification of Terminal Disclaimer - Accepted	0
52	11-29-2007	Mail Non-Final Rejection	0
51	11-26-2007	Non-Final Rejection	0
50	10-20-2006	Information Disclosure Statement considered	0
49	03-14-2007	Information Disclosure Statement considered	0
48	03-23-2007	Information Disclosure Statement considered	0
47	08-15-2006	Information Disclosure Statement considered	0
43	07-30-2007	Case Docketed to Examiner in GAU	0
42	06-18-2007	Case Docketed to Examiner in GAU	0
41	08-15-2006	Information Disclosure Statement (IDS) Filed	0
40.7	03-23-2007	Information Disclosure Statement (IDS) Filed	0
40	03-23-2007	Information Disclosure Statement (IDS) Filed	0
39.7	03-14-2007	Information Disclosure Statement (IDS) Filed	0
39	03-14-2007	Information Disclosure Statement (IDS) Filed	0
38	03-07-2007	Case Docketed to Examiner in GAU	0
37	01-19-2007	Case Docketed to Examiner in GAU	0
36	10-20-2006	Reference capture on IDS	0
35.7	10-20-2006	Information Disclosure Statement (IDS) Filed	0

35	10-20-2006	Information Disclosure Statement (IDS) Filed	0
34	03-23-2006	IFW TSS Processing by Tech Center Complete	0
33	08-26-2005	Correspondence Address Change	0
32	08-26-2005	Change in Power of Attorney (May Include Associate POA)	0
31.7	12-30-2003	Information Disclosure Statement (IDS) Filed	0
31	12-30-2003	Information Disclosure Statement (IDS) Filed	0
30	10-14-2004	Reference capture on IDS	0
29	12-30-2003	Reference capture on IDS	0
28	07-26-2005	PARALEGAL OR ELECTRONIC TERMINAL DISCLAIMER APPROVED	0
27	07-26-2005	Notification of Terminal Disclaimer - Accepted	0
26	07-26-2005	Case Docketed to Examiner in GAU	0
25	07-26-2005	Case Docketed to Examiner in GAU	0
24	04-20-2004	Terminal Disclaimer Filed	0
23	07-25-2005	Correspondence Address Change	0
22	07-23-2005	Correspondence Address Change	0
21.7	06-03-2005	Information Disclosure Statement (IDS) Filed	0
21	06-03-2005	Information Disclosure Statement (IDS) Filed	0
19	06-03-2004	Terminal Disclaimer Filed	0
18.7	10-14-2004	Information Disclosure Statement (IDS) Filed	0
18	10-14-2004	Information Disclosure Statement (IDS) Filed	0
17.7	10-14-2004	Information Disclosure Statement (IDS) Filed	0
17	10-14-2004	Information Disclosure Statement (IDS) Filed	0
16	06-03-2004	Corrected filing receipt	0
15	01-12-2005	Transfer Inquiry to GAU	0
14	04-27-2004	Application Return from OIPE	0

13	04-28-2004	Application Is Now Complete	0
12	04-27-2004	Application Return TO OIPE	0
11	04-27-2004	Application Return from OIPE	0
10	04-28-2004	Application Is Now Complete	0
9	04-27-2004	Application Return TO OIPE	0
8	04-27-2004	Application Return from OIPE	0
7	04-27-2004	Application Return TO OIPE	0
6	04-27-2004	Application Dispatched from OIPE	0
5	04-28-2004	Application Is Now Complete	0
4	02-26-2004	Cleared by OIPE CSR	0
3	02-26-2004	CASE CLASSIFIED BY OIPE	0
2	01-21-2004	IFW Scan & PACR Auto Security Review	0
1	12-30-2003	Initial Exam Team nn	0
0.5	12-30-2003	Filing date	0

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Date: December 12, 2011

Gene M. Garner, II
Staas & Halsey LLP
1201 New York Avenue, N.W.
7th Floor
Washington, DC 20005

Patent No: 7,970,491 B2
Application No.: 10/747,228
Applicants: Hyoung-ki Lee, et al.
Issued: June 28, 2011
Title: **ROBOT LOCALIZATION SYSTEM**

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 Rules 1.322.

Inspection of the application file for the patent reveals that column 10, lines 3 and 5 in the patent is printed in accordance with the record in the Patent and Trademark Office, as passed to issue by the examiner. There being no fault on the part of the Patent and Trademark Office, it has no authority to issue a certificate of correction under the provision of 1.322.

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

However, further consideration will be given to this matter, upon receipt of a request for certificate of correction under the provision of 1.323, accompanied by the appropriate fee which is presently $100.

Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571)-272-0460

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APR 13 2012
OFFICE OF PETITIONS

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

In re Application of	:	
Marie-Christine Bissery	:	
Patent Number: 8,101,652	:	DECISION ON REQUEST
Issue Date: 01/24/2012	:	FOR RECONSIDERATION OF
Application No. 10/747279	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 12/30/2003	:	
Attorney Docket Number: 3806.0281-11	:	

This is a decision on the petition filed on February 22, 2012, 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 thirty (630) 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 thirty (630) days is **GRANTED TO THE EXTENT INDICATED**.

A review of Office records 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 an Information Disclosure Statement ("IDS"), on June 14, 2007, after filing a Request for Continued Examination ("RCE"), on May 11, 2007. Pursuant to 37 CFR 1.704(c)(8), the patent term is reduced by a period of 34 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 **five hundred ninety-six (596)** 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

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,101,652 B2

DATED : **January 24, 2012**

INVENTOR(S) : Bissery

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 1086 days.

Delete the phrase "by 1086 days" and insert – by 596 days--

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: 42P17813	Patent Number: 7,662,689
Filing Date (or 371(b) or (f) Date): 12-23-2003	Issue Date: 2-16-2010
First Named Inventor: Boyan Boyanov	
Title: STRAINED TRANSISTOR INTEGRATION FOR CMOS	

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 /Michael D. Plimier/	Date July 8, 2010
Name (Print/Typed) Michael D. Plimier	Registration Number 43,004

***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.

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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INTEL/BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 08/16/2010

Applicant	: Boyan Boyanov	: DECISION ON REQUEST FOR
Patent Number	: 7662689	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/747,321	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/23/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **592** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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

In re Patent No. 8,124,650	: DECISION ON REQUEST
Bissery	: FOR
Issue Date: February 28, 2012	: RECONSIDERATION OF
Application No. 10/747,372	: PATENT TERM ADJUSTMENT
Filed: December 20, 2003	: and
Atty Docket No. 3806.0281-09	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on February 28, 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 six hundred and sixty-six (666) 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 sixty-six (666) days is **GRANTED**.

Deposit account 06-0916 will be charged $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 six hundred and sixty-six (666) days.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,124,650 B2

DATED : Feb. 28, 2012

INVENTOR(S) : Bissery

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 (1119) days

Delete the phrase "by 1119 days" and insert – by 666 days--

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

Intellectual Property Department
Cubist Pharmaceuticals, Inc.
65 Hayden Avenue
Lexington MA 02421

MAILED
JUN 15 2011
OFFICE OF PETITIONS

In re Application of	:	
KELLEHER et al.	:	
Application No. 10/747,485	:	DECISION DISMISSING PETITIONS
Filed: December 29, 2003	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. C062-02/02 US	:	

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed May 27, 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 nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**

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

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

The petition does not satisfy item (1) above.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that

amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

With regards to making a reference to provisional application serial no. 60/177,170, a petition to revive abandoned application serial no. 10/747,485 is also required. The reference required by 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5) must be submitted during the pendency of the nonprovisional application. See MPEP 201.11.

In regards to item (2), the rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition under 37 CFR §§ 1.78(a)(3) or 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 or 119(e) for the benefit of priority to the prior-filed provisional application. In this instance, the fee required by law is $1410.00. Petitioner's Deposit Account No. 50- 1986 has been charged $1410.00 as authorized in the petition.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition to correct the above matter is required.

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

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

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

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

Any questions concerning this matter may be directed to Jose' G Dees at (571) 272-1569.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Intellectual Property Department
Cubist Pharmaceuticals, Inc.
65 Hayden Avenue
Lexington MA 02421

MAILED
NOV 08 2011
OFFICE OF PETITIONS

In re Application of :
KELLEHER et al. :
Application No. : 10/747,485 : ON PETITION
Filed: December 29, 2003 :
Attorney Docket No.: C062-02/02 US :
For: **HIGH PURITY LIPOPEPTIDES**

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed April 20, 2007, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on June.20, 2007. *See* MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1620.00; 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. 11/739,180.

Telephone inquiries concerning this decision should be directed to Jose' G Dees at (571) 272-1569.

Christopher Bottorff
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Intellectual Property Department
Cubist Pharmaceuticals, Inc.
65 Hayden Avenue
Lexington MA 02421

MAILED
NOV 08 2011
OFFICE OF PETITIONS

In re Application of
KELLEHER et al.
Application No. 10/747,485
Filed: December 29, 2003
Docket No. C062-02/02 US

DECISION ON PETITIONS
UNDER 37 CFR 1.78(a)(3) AND (a)(6)

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed September 8, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications as set forth in the currently filed amendment.

The petitions are **GRANTED.**

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

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

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

All the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

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

The $1410.00 petition fee submitted with this renewed petition is unnecessary and will be refunded to petitioner's deposit account 50-1986 in due course.

Any questions concerning this matter may be directed to Jose' G Dees at (571) 272-1569

Jose' G Dees
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/9/11

TO SPE OF : ART UNIT 1623

SUBJECT : Request for Certificate of Correction for Appl. No.: 10747742 Patent No.: 7790905

CofC mailroom date: 2/25/11

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.

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

Comments: The C of C has been approved.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/S. A. Jiang/ March 17, 2011 SPE 1623

SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/9/11

TO SPE OF : ART UNIT 1623

SUBJECT : Request for Certificate of Correction for Appl. No.: 10747742 Patent No.: 7790905

CofC mailroom date: 2/25/11

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.

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

Comments: The C of C has been approved.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/S. A. Jiang/ March 17, 2011 SPE 1623

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

Paper No.

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

DEC 15 2011

OFFICE OF PETITIONS

In re Patent No. 7,921,182
Issued: April 5, 2011
Application of
Hamasaki, Okkonen, and
Gustafson
Application No. 10/748,053
Filed: December 30, 2003
Attorney Docket No. 14317US02
Title: MANAGEMENT OF SERVICE COMPONENTS INSTALLED IN AN ELECTRONIC DEVICE IN A MOBILE SERVICES NETWORK

DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.47(A)

This is in response to the petition pursuant to 37 C.F.R. § 1.47(a), filed on November 10, 2011.

This petition is **DISMISSED as inappropriate.**

This petition was filed in order to obtain Rule 1.47 status for an assignment that has not been executed by one of the three joint inventors.

Application number 10/748,053 was filed on December 30, 2003 and a fully-executed declaration was submitted on May 10, 2004. On April 5, 2011, the application matured into U.S. Patent No. 7,921,182.

The provisions of 37 C.F.R. § 1.47 are not applicable to applications which have issued as a patent, nor are they applicable to matters concerning unsigned assignment documents.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of

correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at http://www.uspto.gov/web/forms/sb0123.pdf.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.[1]

Paul Shanoski
Senior Attorney
Office of Petitions

cc: Jason P. Lorfing
Brooks & Cameron, PLLC
1221 Nicollet Avenue, Suite 500
Minneapolis, MN 55403

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any of Petitioner's further action(s).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

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

MAILED
SEP 12 2011
OFFICE OF PETITIONS

In re Application No. 10/748,234	:	
Yaguchi	:	DECISION ON
Filed: December 31, 2003	:	REQUEST FOR
Attorney Docket No. 1760.1001	:	RECONSIDERATION OF
Title: INTRAOCULAR DEVICE FOR	:	PATENT TERM ADJUSTMENT
RETAINING A LENS CAPSULE	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(B)(1) and 37 C.F.R. § 1.705," filed on August 23, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is greater than the one thousand and seventy-one (1071) 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 four months from the receipt of the issue fee to issue this patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within four months of the receipt of the issue fee, 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 1.703(a)(4) 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 1.70a(a)(4) 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(a)(4) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, Applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). 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] For example, if Applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then Applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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 decision 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
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No.

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

MAILED
DEC 01 2011
OFFICE OF PETITIONS

In re Patent No. 8,038,684	:	
Yaguchi	:	
Issue Date: October 18, 2011	:	
Application No. 10/748,234	:	DECISION ON
Filed: December 31, 2003	:	REQUEST FOR
Attorney Docket No. 1760.1001	:	RECONSIDERATION OF
Title: INTRAOCULAR DEVICE FOR	:	PATENT TERM ADJUSTMENT
RETAINING A LENS CAPSULE	:	

This is in response to the "RESUBMISSION OF APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(B)(1) and 37 C.F.R. §§ 702 - 705," which is being treated as a petition pursuant to 37 C.F.R. § 1.705(d). This submission was filed on November 10, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from one thousand, five hundred and six (1506) days to one thousand, eight hundred and forty-three (1843) days.

This petition pursuant to 37 C.F.R. § 1.705(d) is **DISMISSED**.

On August 23, 2011, Applicant submitted an "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(B)(1) and 37 C.F.R. § 1.705" (hereinafter referred to as "petition pursuant to 37 C.F.R. § 1.705(b)"), where Applicant argued that the correct patent term adjustment to be indicated on the patent is greater than the one thousand and seventy-one (1071) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requested this correction solely on the basis that the Office will take in excess of four months from the receipt of the issue fee to issue this patent.

The petition pursuant to 37 C.F.R. § 1.705(b) was dismissed as premature via the mailing of a decision on September 12, 2011. The decision acknowledged the submission of the required $200

fee, indicated that no additional fees were required,[1] and the following paragraph appears on the second page of the decision:

> 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) (emphasis added).

With this petition pursuant to 37 C.F.R. § 1.705(d), Petitioner has asserted that the decision on the petition pursuant to 37 C.F.R. § 1.705(b) "indicated that no additional fees would be required for the re-submisison." This assertion is erroneous. The decision on the petition pursuant to 37 C.F.R. § 1.705(b) indicated, in the language reproduced and emphasized above, that should a request for reconsideration be filed after issuance pursuant to 37 C.F.R. § 1.705(d), the required fee pursuant to 37 C.F.R. § 1.18(e) would be required.

Petition fee requirement

The fee for filing a petition pursuant to 37 C.F.R. § 1.705(d) is $200, as set forth in 37 C.F.R. § 1.18(e). This fee was not submitted with this petition pursuant to 37 C.F.R. § 1.705(d), and this petition pursuant to 37 C.F.R. § 1.705(d) does not contain a general authorization to charge any fee deficiency to Petitioner's Deposit Account.

The payment of the required petition fee is a prerequisite to the filing of a petition pursuant to 37 C.F.R. § 1.705(d). Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature.

Any subsequent filing pertaining to this issue should be titled "renewed petition pursuant to 37 C.F.R. § 1.705(d)," include the required $200 fee, indicate that the attorney handling this matter is Paul Shanoski, and may be submitted by:

---

[1] The language "[n]o additional fees are required" in the third full paragraph on the second page of the decision on the petition pursuant to 37 C.F.R. § 1.705(b) indicated that the fee that was associated with the submission of the petition pursuant to 37 C.F.R. § 1.705(b) had been paid in full.

- Mail - Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450);
- Hand-delivery - Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314), or;
- Facsimile - (571) 273-8300. Please note this is a central facsimile number).

Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web (https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html).

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.

Patentee is reminded that any petition pursuant to 37 C.F.R. § 1.705(d) must be filed within two months of the issuance of the patent.

Telephone inquiries regarding this decision 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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

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

MAILED

DEC 19 2011

OFFICE OF PETITIONS

In re Patent No. 8,038,684	:	
Yaguchi	:	
Issue Date: October 18, 2011	:	
Application No. 10/748,234	:	DECISION ON
Filed: December 31, 2003	:	RENEWED REQUEST FOR
Attorney Docket No. 1760.1001	:	RECONSIDERATION OF
Title: INTRAOCULAR DEVICE FOR	:	PATENT TERM ADJUSTMENT
RETAINING A LENS CAPSULE	:	

This is in response to the "RESPONSE TO DECEMBER 1, 2011 'DECISION ON REQUEST FOR RECONSIDERTAION OF PATENT TERM ADJUSTMENT," which is being treated as a renewed petition pursuant to 37 C.F.R. § 1.705(d). This submission was filed on December 6, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from one thousand, five hundred and six (1506) days to one thousand, eight hundred and forty-three (1843) days.

This renewed petition pursuant to 37 C.F.R. § 1.705(d) is **DISMISSED.**

BACKGROUND AND PROCEDURAL HISTORY

A petition pursuant to 37 C.F.R. § 1.705(b) was filed on August 23, 2011, and was dismissed as premature via the mailing of a decision on September 12, 2011.

On October 18, 2011, the above-identified application matured into US Patent No. 8,038,684 with a patent term adjustment of 1506 days.

An original petition pursuant to 37 C.F.R. § 1.705(d) was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d). The original petition pursuant to 37 C.F.R.

§ 1.705(d) was dismissed via the mailing of a decision on December 1, 2011 for failure to include the required fee.

With this renewed petition, Petitioner includes the required fee, acknowledges that this fee was submitted with this renewed petition,[1] and erroneously asserts that the decision of September 21, 2011 indicated that no additional fees would be required should a request for reconsideration pursuant to 37 C.F.R. § 1.705(d) be filed after issuance.[2]

With this renewed petition pursuant to 37 C.F.R. § 1.705(d), Patentee has disputed the failure to accord any Office delay pursuant to 37 C.F.R. § 1.703(a)(6), which requires the Office to adjust the patent term by

> "[t]he number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued."
>
> See also 37 C.F.R. § 1.702(a)(4).

Patentee has indicated that this patent is not subject to a terminal disclaimer.[3]

By the renewed petition, Patentee asserts that the patent term should be adjusted by an additional 337 days, pursuant to 37 CFR §§ 1.702(a)(4) and (a)(6).

A Request for Continued Examination (RCE) was filed on March 11, 2010, and a first notice of allowance was mailed on April 29, 2010. The issue fee was received on July 14, 2010, and on that same date, the Office mailed a "notice of withdrawal from issue under 37 CFR 1.313." A second notice of allowance was mailed on June 10, 2011, and the issue fee was submitted a second time on September 12, 2011. This application matured into a patent on October 18, 2011, which is four months and 338 (not 337) days after the July 14, 2010 submission of the issue fee.

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[1] Renewed petition, page 1.
[2] Id. at 2. See also decision of September 12, 2011, page 2 and decision of December 1, 2011, page 2.
[3] Renewed petition, page 2.

Patentee asserts that the period of adjustment to the patent term under 37 CFR 1.702(a)(4) and 1.703(a)(6) is properly calculated using the July 14, 2010 submission of the issue fee, and therefore, an additional adjustment of 338 (not 337) days is warranted: the period commencing with the day after the four month anniversary of the first submission of the issue fee (November 14, 2010) and terminating with the issuance of this patent on October 18, 2011.

RELEVANT STATUTES

35 U.S.C. § 131 provides that:

> The 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.

35 U.S.C. § 132 provides that:

> (a) Whenever, 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; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.
> (b) The Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such continued examination and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under section 41(h)(1) of this title.

35 U.S.C. § 133 provides that:

> 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 Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

35 U.S.C. § 154(b)(1)(A), provides, in relevant part:

> Subject to the limitations under [35 U.S.C. § 154(b)(2)], if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to—
>
> respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;
>
> the term of the patent shall be extended 1 day for each day after the end of this [four-month period] until [the response] is taken.

DECISION

Any period of adjustment calculated under 35 USC 154(b)(1)(A)(iv) and 37 CFR 1.702(a)(4) and 1.703(a)(6) will be based on the date of September 12, 2011, the date the issue fee was paid in response to the second notice of allowance and all outstanding requirements were met.

35 USC 154(b)(1)(A)(iv) provides for entry of a period of adjustment for Office failure to:

> issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.

37 CFR 1.702(a)(4), implements the statute, by providing for adjustment of patent term due to Office failure to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

Section 1.703(a)(6) pertains to the provisions of 35 U.S.C. 154(b)(1)(A)(iv) and § 1.702(a)(4). Section 1.703(a)(6) specifies:

> the period is the number of days, if any, beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date the patent was issued.

Patentee is incorrect in relying solely on the date of payment of the issue fee to calculate this period. As clearly stated in

the rules and supported by the statute, the period begins on the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied.

Further, it is proper for the Office to determine when all outstanding requirements are satisfied. The Office has stated in the final rule:

> the date the issue fee was paid and all outstanding requirements were satisfied is the later of the date the issue fee was paid or the date all outstanding requirements were satisfied. However, if prosecution in an application is reopened after allowance (see MPEP 1308), all outstanding requirements are not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151 (see MPEP 1308). See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

This interpretation is not inconsistent with the statute. Both the statute and the rule consider Office delay based on the date the Office takes action after the issue fee is paid and all outstanding requirements are met. Payment of the issue fee in of itself may not be sufficient to have the patent issue. A patent cannot issue until all outstanding requirements necessary to be satisfied for its issuance have been met. Accordingly, the Office is not deemed to have engaged in examination delay until 4 months after the issue fee has been paid and all outstanding requirements have been met.

Moreover, where prosecution in an application is reopened after allowance, all outstanding requirements are not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151. After reopening of prosecution, the patent cannot issue until all outstanding requirements necessary to be satisfied for its issuance have been met. In the circumstance where the Office determines that withdrawal of the application from issue is appropriate, prosecution is reopened and the patent cannot issue until the matter that served as the basis for the withdrawal from issue is addressed, and if at all, a new Notice of Allowance is issued. Further, regardless of the previous payment of the issue fee, all outstanding requirements are not met until an applicant replies to the new notice of allowance. For the patent to issue (and the application not to be

met until an applicant replies to the new notice of allowance. For the patent to issue (and the application not to be considered abandoned), applicant must return Part B of the issue fee transmittal. Thus, it is proper to consider all outstanding requirements not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151 and applicant properly responds to the new notice of allowance.

In this instance, a second notice of allowance was mailed June 20, 2011 and all outstanding requirements were met when the new issue fee transmittal was submitted on September 12, 2011. After payment of the issue fee on July 14, 2010, all requirements necessary for issuance of the patent were not met. The Office determined that there were matters that had to be addressed before issuance and thus, withdrew the application from issuance (the "reasons for allowance" portion of the Detailed Action portion of the Notice of Allowability required further details.)[4] In this instance, not until issuance of the new Notice of Allowance on June 10, 2011 and payment of the issue fee on September 12, 2011 were the matters that served as the basis for withdrawal from issuance resolved and all outstanding requirements met for issuance of this patent. The controlling date in calculating the period of adjustment for Office delay pursuant to 35 USC 154(b)(1)(A) (iv) and 37 CFR 1.702(a)(4) is the date of submission of the issue fee transmittal on September 12, 2011 in response to the second notice of allowance mailed June 10, 2011.

CONCLUSION

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not 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.

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[4] Compare the final two lines of the Reasons for Allowance mailed on April 29, 2010 with the final two lines of the Reasons for Allowance mailed June 10, 2011. See also the Interview Summary mailed on June 10, 2011.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[5]

Paul Shanoski
Senior Attorney
Office of Petitions

[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 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. 6982200
Issue Date: January 3,2006
Application No. 10748286
Filed: December 31,2003
Attorney Docket No. HITA.0473

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

This is a decision on the electronic petition, filed January 6,2011 ,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 January 6,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6982200	2006-01-03	10748286	2003-12-31	ID 002711

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	/SMG/	Date (YYYY-MM-DD)	2011-01-06
Name	Steven M. Gruskin	Registration Number	36818

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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MINNEAPOLIS MN 55440-1022

MAILED
JAN 13 2012
OFFICE OF PETITIONS

In re Patent No. 8,051,104	:
Weissman et al.	: DECISION ON REQUEST FOR
Issue Date: November 1, 2011	: RECONSIDERATION OF
Application No. 10/748,399	: PATENT TERM ADJUSTMENT
Filed: December 30, 2003	: and
Attorney Docket No. 16113-422001	: NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 30, 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 three hundred fifty-five (355) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred sixty-eight (168) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

BACKGROUND

On November 1, 2011, the above-identified application matured into U.S. Patent No. 8,051,104, with a revised patent term adjustment of 421 days. On December 30, 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 355 days.

OPINION

On Applicant delay pursuant to 37 CFR 1.704(b)

First, Patentee disputes two separate periods of reduction entered for applicant delay, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). With respect to a period of reduction of 2 days accorded for a late response filed on November 6, 2006, Patentee argues that the period of reduction should be calculated based on a due date for reply of November 6, 2006, as the date three months from the mailing date of the Office action was November 4, 2006, which fell over a weekend. This reduction has been reconsidered, and it is determined that entry of a reduction of 2 days pursuant to 35 U.S.C. §21(b) is not warranted. The reply was timely filed pursuant to 35 U.S.C. §21(b). There was no delay within the meaning of 37 CFR 1.704(b). Accordingly, the period of reduction of 2 days has been removed.

However, with respect to a period of reduction for a late response filed on March 3, 2011, the reduction is warranted and will not be removed. Patentee is incorrect that the period of reduction, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b), is incorrectly calculated as 26 days. The weekend/holiday exception does not apply to the period of applicant delay at issue. The Office action was mailed on November 5, 2010, with a shortened statutory period for reply of three (3) months, with extensions of time obtainable under §1.136(a). It is recognized that the three-month deadline, February 5, 2011, ended on a weekend. However, in this instance, patentee had not exercised the §21(b) weekend/holiday exception to file a timely response under §133 on the following business day. Patentee timely filed a reply on March 3, 2011. In other words, the reply filed March 3, 2011 was not timely filed pursuant to 35 U.S.C. §21(b). Thus, the period of reduction was properly calculated as 26 days counting the number of days beginning on the day after the date that is three months after the date of mailing of the Office action, November 5, 2010 and ending on the date the reply was filed, March 3, 2011. Accordingly, the period of reduction of 26 days will be retained.

On Applicant delay pursuant to 37 CFR 1.704(c)(7)

Further, Patentee discloses that they should have been accorded a period of reduction of 117 days pursuant to 37 CFR 1.704(c)(7).

Patentee is correct. An amendment with an omission was filed on March 22, 2007. (See Notice of non-compliant amendment mailed June 8, 2007). An amendment correcting the omission was filed 117 days after the initial reply on July 17, 2007. Accordingly, a period of reduction of 117 days for applicant delay is being entered.

On Applicant delay pursuant to 37 CFR 1.704(c)(3)

Further, Patentee discloses that they were accorded a period of reduction of 157 in association with a period of abandonment; however, the period of reduction should be 295 days, from July 17, 2009 to May 7, 2010.

37 C.F.R. § 1.704(c) 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:

> (3) Abandonment of the application or late payment of the issue fee, 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 date of abandonment or the date after the date the issue fee was due and ending on the earlier of:
>
> (i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or
>
> (ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed;

Patentee is correct. In this instant, the application became abandoned for failure to file a reply to the final Office action mailed April 16, 2009. No extension of time was obtained. Accordingly, the application became abandoned effective July 17, 2009. A petition to revive was filed on March 1, 2010, and a

decision granting the petition was filed within four months on May 7, 2010. Therefore, Applicants should have been assessed delay for the period beginning on July 17, 2009 (the date the application became abandoned) to May 7, 2010 (the date the decision reviving the application was mailed), or 295 days. The period of reduction of 157 days is being removed and the period of reduction of 295 days is being entered.

On Office delay pursuant to 37 CFR 1.702(b)

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 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.

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends 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, Patentee argues that (after the filing of the request for continued examination on March 22, 2007, September 2, 2008, and March 1, 2010) the Office mailed a Notice of Allowance on July 27, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 98 day period from July 27, 2011 (the mailing date of the Notice of Allowance) until November 1, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 98 days and be increased from 81 to 179 days.

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 81 days based on the application having been filed under 35 U.S.C. 111(a) on December 30, 2003 and the patent not having issued as of the day after the three year date, December 31, 2006, and a request for continued examination under 132(b) having been filed on March 22, 2007. In other words, the entire 1686-day period (including the 98 day period beginning on July 27, 2011) from the date of filing of the first request for continued examination to the date of issuance of the patent 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 three-year period 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 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

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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.

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. 56365, 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 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)," meaning that the limitations of paragraph 2 apply to this paragraph's extension 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 issuance 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 is not counted continuously from the date of filing of the application to the day 3 years after the filing date of the application, but rather the three-year period for the Office to issue a patent is counted not beginning on the date of filing of the application in the United States but not including "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, 2008 U.S. Dist. LEXIS 76063 (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 extensions 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 in "that 3-year period" any days it takes to prosecute the application as specified in clauses (i)-(ii). The "any" signifies that the days taken up 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. The "time consumed by" refers to the days taken up with 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, 4) appellate review or 5) any delay in processing requested by applicant, except as permitted by paragraph (3)(C), which 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. 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 taken up with or any time consumed by clauses (i)-(iii), including 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 taken up with 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).

By nature, 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.

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 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.

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 first request for continued examination was filed on March 22, 2007, and the patent issued by virtue of that request on November 1, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 22, 2007 and ending on November 1, 2011 is not included in calculating Office delay.

CONCLUSION

With respect to correction of the 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 Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred sixty-eight (168) days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,051,104 B2

DATED : **November 1, 2011** **DRAFT**

INVENTOR(S) : Weissman 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 421 days

Delete the phrase "by 421 days" and insert – by 168 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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In re Patent No. 7,930,206 Koningstein Issue Date: April 19, 2011 Application No. 10/748,681 Filed: December 31, 2003 Attorney Docket No. 16113-0639001 Title: SYSTEM AND METHOD FOR ENABLING AN ADVERTISEMENT TO FOLLOW THE USER TO ADDITIONAL WEB PAGES	DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition filed on June 17, 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 four hundred sixty-eight (1,468) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,930,206 on April 19, 2011. The patent issued with a patent term adjustment of 1355 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 756 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 869 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 756 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.

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 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. 56365, 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.

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.

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) 272-3215.

Charlema Grant

Charlema Grant
Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 7,930,206 Koningstein Issue Date: April 19, 2011 Application No. 10/748,681 Filed: December 31, 2003 Attorney Docket No. 16113-0639001 Title: SYSTEM AND METHOD FOR ENABLING AN ADVERTISEMENT TO FOLLOW THE USER TO ADDITIONAL WEB PAGES	DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" filed September 21, 2011. Patentee requests that the determination of patent term adjustment under 35 U.S.C. § 154(b) be corrected from 1,355 days to 1,468 days.

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 petition to change patent term adjustment determination under 35 U.S.C. § 154(b) from 1,355 days to a 1,468 days is **DENIED**.

BACKGROUND

On April 19, 2011, the above-identified application matured into U.S. Patent No. 7,930,206, with a revised patent term adjustment of 1,355 days. A petition decision under 37 CFR 1.705(d) mailed

on July 21, 2011 dismissed the request to correct the patent term to 1,468 days. On September 21, 2011, patentee submitted this request for reconsideration of patent term adjustment, asserting that the correct number of days of Patent Term Adjustment is 1,468. Patentee maintains 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, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 28, 2010, thereby closing examination of the application on that date. Thus, patentee argues no continued examination took place during the 113 day period from December 28, 2010 (the mailing date of the Notice of Allowance) until April 19, 2011 (the date the patent was issued). As such, patentee maintains that the "B delay" should include 113 days and be increased from 756 to 869 days. Patentee concludes that the correct patent term adjustment is 1,468 days (the sum of 1,143 days of "A delay" and 869 days of "B delay" minus 472 days of overlap minus 72 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

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 756 days based on the application having been filed under 35 U.S.C. 111(a) on December 31, 2003 and the patent not having issued as of the day after the three year date, January 1, 2006, and a request for continued examination under 132(b) having been filed on January 26, 2009. In other words, the 756-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 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,

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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.

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 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

[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.

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.

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

[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.

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).

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 1,468 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 1,468 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 Charlema Grant, Petitions Attorney at (571) 272-3215.

Anthony Knight
Director
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
JAN 12 2012
OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,930,206 Issued: April 19, 2011 Application No. 10/748,681 Filed: December 31, 2003 Attorney Docket No.: 16113-0639001 For: SYSTEM AND METHOD FOR ENABLING AN ADVERTISEMENT TO FOLLOW THE USER TO ADDITIONAL WEB PAGES	FINAL AGENCY DECISION ON REQUEST TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR

This decision on the "PETITION UNDER 37 C.F.R. §1.181 (a)(3) TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR," filed November 28, 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 27, 2011.

The Decision maintains that the above-identified patent is entitled to one thousand three hundred fifty-five (1,355) days of patent term adjustment ("PTA"). Patentees request that the Director review the decision and modify the PTA calculation to one thousand four hundred sixty-eight (1,468) 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 1,355 days, as indicated in the final agency decision of September 27, 2011. The patent is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred fifty-five (1,355)** days.

Andrew Hirshfeld
Associate Commissioner for Patent Examination Policy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110927

DATE : September 13, 2011

TO SPE OF : ART UNIT 2618

SUBJECT : Request for Certificate of Correction on Patent No.: 7640024

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:

1- The specification correction is approved.

2- The claim correction is not approved because this would change the scope of the claim.

/Duc M. Nguyen/
9/27/11

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/13/2011

TO SPE OF : ART UNIT 2618

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/748988 Patent No.: 7640024 B2

CofC mailroom date: 9/7/2011

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: _____

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: 1- Approved for specification corrections only.
2- Not approve for claim correction because this would change the scope of the claim.

/Duc M. Nguyen/ — **SPE**

2618 — **Art Unit**

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

ENTER IN PART: /D.N./

PATENT NO. : 7,640,024

APPLICATION NO.: 10/748,988

09/27/2011

ISSUE DATE : December 29, 2009

INVENTOR(S) : Goren

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

IN THE SPECIFICATION APPROVED: /D.N./

1. In Column 1, Line 6, delete "OF" and insert - - OF THE - -, therefor.
(ORIGINALLY FILED SPECIFICATION DATED DECEMBER 30, 2003, PAGE 1 (PAGE 174 OF FW), LINE 1)

2. In Column 2, Line 46, delete "DESCRIPTION" and insert - - DETAILED DESCRIPTION - -, therefor.
(ORIGINALLY FILED SPECIFICATION DATED DECEMBER 30, 2003, PAGE 5, LINE 12)

IN THE CLAIMS DO NOT ENTER: /D.N./

3. In Column 4, Line 41, in Claim 1, delete "offset non-intersecting" and insert - - offset - -, therefor.
(AMENDMENTS TO THE CLAIMS DATED JUNE 26, 2009, PAGE 3, CLAIM 14, LINE 7)

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

MOTOROLA SOLUTIONS, INC.
1303 E. ALGONQUIN ROAD, IL01/11TH FL
SCHAUMBURG, IL 60196

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.

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Paper No.

LUCAS & MERCANTI, LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK NY 10016

MAILED
AUG 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Grafe et al.	:	
Application No. 10/749,188	:	DECISION ON PETITION
Filed: December 30, 2003	:	PURSUANT TO
Attorney Docket No.: HM-386CIP	:	37 C.F.R. § 1.137(B)
Title: HIGH-SPEED SHEAR FOR	:	
TRANSVERSELY CUTTING ROLLED	:	
STRIP	:	

This is a decision on the petition, pursuant to 37 C.F.R. § 1.137(b) to revive the above-identified application, filed on July 19, 2011.

The petition pursuant to 37 C.F.R. § 1.137(b) is **DISMISSED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 8, 2005, which set a shortened statutory period for reply of three months. An amendment was received on December 12, 2005, along with a three-month extension of time (a four-month extension of time was required in order to make timely the response). A notice requiring extension of time fee was mailed on December 19, 2005, which did not extend the period for response that was set by the non-final Office action. No response was received, and no additional extension of time under the provisions of 37 C.F.R. § 1.136(a) was requested. Accordingly, the above-identified application became abandoned on September 9, 2005. A notice of abandonment was mailed on March 24, 2006.

It is noted that on July 13, 2011, a "Request for Refund" was filed, requesting a refund of the $747 extension of time that was submitted on December 19, 2005. It is further noted that on July 25, 2011, the Office mailed a letter indicating that this request would not be accommodated.

With this petition, Applicant has submitted the petition fee and the required statement of unintentional delay. The first and second 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]

Regarding the third requirement, Applicant has not established that the entire period of delay was unintentional. It is noted that the present petition was not filed until more than five years and three months had passed since the mailing of the notice of abandonment. It is not clear why the Applicant chose to take no course of action for such a long period of time. It does not appear that any action was taken to further the prosecution of this application, subsequent to the mailing of the notice of abandonment on March 24, 2006, for more than five years and three months (other than the request for a refund of the extension of time fee that was filed on July 13, 2011).

As such, it appears that the Applicant intentionally allowed this application to go abandoned. The extended inaction of the Applicant appears to be intentional.

A discussion follows.

In order for a petition under 37 C.F.R. § 1.137(b) to be granted, the holder of the rights to the application must have unintentionally allowed the application to go abandoned, and a delay resulting from a deliberately chosen course of action on the part of the applicant is not an "unintentional" delay within the meaning of 37 C.F.R. § 1.137(b).

The periods of delay:

There are three periods to be considered during the evaluation of a petition under 37 C.F.R. § 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;
(2) the delay in filing an initial petition pursuant to 37 C.F.R. § 1.137(b) to revive the application; and
(3) the delay in filing a grantable petition pursuant to 37 C.F.R. § 1.137(b) to revive the application.

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

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1 See Rule 1.137(d).

As to Period (1), the patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Commissioner to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 C.F.R. § 1.137(b)(3) provides that a petition under 37 C.F.R. § 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here there is a question whether the initial delay was unintentional, the Applicant must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay of more than five years and three months in resuming prosecution, there is a question whether the entire delay was unintentional. Applicant should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 C.F.R. § 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment (the Applicant). That party, in turn must explain what effort(s) was made to reply to the notice of December 19, 2005, which explicitly informed Applicant that the three-month extension of time was insufficient. If no effort was made to

submit the proper extension of time fee, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). It is noted that Petitioner is not listed as an attorney of record, however the attorney of record, Friedrich Kueffner, Reg. No. 29,482 submitted both the response of December 12, 2005 and the aforementioned request for a refund. Therefore, it does not appear that Petitioner, Klaus P. Stoffel, Reg. No. 31,668 as firsthand knowledge of the facts and circumstances regarding the abandonment of this application. As such, **the attorney of record should explain why this application became abandoned subsequent to the mailing of the notice of December 19, 2005. A statement from the attorney of record must be provided. It must be explained why no response was submitted to the notice of December 19, 2005 for such an extended period of time.**

As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996)(unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2), where the applicant deliberately chose not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 C.F.R. § 1.137(b).[2]

The language of both 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b) are clear and unambiguous, and furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7

2 See MPEP § 711.03(c).

(1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 C.F.R. § 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated clear that any protracted delay (here, more than five years and three months) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. **A statement is required from the attorney of record, explaining why this petition was not filed sooner.**

Moreover, Applicant and the attorney of record must each explain what prompted the decision to advance the prosecution of this application after the passage of so much time. A statement from each is required.

Punctuality and Due Diligence:

For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894).

Similarly, an invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

The lengthy period of inaction does not appear to be consistent with the requirements of punctuality, due

diligence, good faith, and the encouragement of reasonable promptness.

On renewed petition, each of these issues will need to be addressed, and statements from both the Applicant and the attorney of record must be included, if it is to be established that the entire period of delay was unintentional.

Applicant is reminded that any statement of facts should be made by one having firsthand knowledge of the facts set forth therein.

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. § 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Thereafter, there will be no further reconsideration of this matter.[3,4].

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[5] hand-delivery,[6] or facsimile.[7] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[8]

---

3 If, on request for reconsideration, Applicant fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. § 1.137(e), will **not** apply to that decision.

4 For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

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

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

7 (571) 273-8300; please note this is a central facsimile number.

8 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

If responding by mail, Applicant 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.[9] All other inquiries concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

9 Applicant 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, Applicant is reminded that no telephone discussion may be controlling or considered authority for Applicant's further action(s).

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.

LUCAS & MERCANTI, LLP
475 PARK AVENUE SOUTH
15TH FLOOR
NEW YORK NY 10016

MAILED
DEC 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Grafe et al.	:	
Application No. 10/749,188	:	DECISION ON RENWEED PETITION
Filed: December 30, 2003	:	PURSUANT TO
Attorney Docket No.: HM-386CIP	:	37 C.F.R. § 1.137(B)
Title: HIGH-SPEED SHEAR FOR	:	
TRANSVERSELY CUTTING ROLLED	:	
STRIP	:	

This is a decision on the renewed petition pursuant to 37 C.F.R. § 1.137(b) to revive the above-identified application, filed on October 11, 2011.

The renewed petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 8, 2005, which set a shortened statutory period for reply of three months. An amendment was received on December 12, 2005, along with a three-month extension of time (a four-month extension of time was required in order to make timely the response). A notice requiring extension of time fee was mailed on December 19, 2005, which did not extend the period for response that was set by the non-final Office action. No response was received, and no additional extension of time under the provisions of 37 C.F.R. § 1.136(a) was requested. Accordingly, the above-identified application became abandoned on September 9, 2005. A notice of abandonment was mailed on March 24, 2006.

The original petition was dismissed via the mailing of a decision on August 11, 2011, which indicated that requirements one and two of Rule 1.137(b) have been met, and that the fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

With this renewed petition, the third requirement of Rule 1.137(b) has been satisfied.

The electronic record, including both the original petition and this renewed petition pursuant to Rule 1.137(b), does not necessitate a finding that the delay between September 9, 2005 and October 11, 2011 was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Klaus P. Stoffel (Reg. No. 31,668), Friedrich Kueffner (Reg. No. 29,482), and Matthew Lingley when accepting Petitioners' representation that the delay in filing the response was unintentional.[2]

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment that was received on December 12, 2005 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

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1 See Rule 1.137(d).

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

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 any of Petitioner's further action(s).

concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : October 13, 2011

TO SPE OF : ART UNIT 3625

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/749614 Patent No.: 8,005,719 B2

CofC mailroom date: 9-20-11

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.

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

Comments: _____

10/24/11

JEFFREY A. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

SPE

3625
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

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED

SEP 14 2010

OFFICE OF PETITIONS

In re Patent No. 7,579,439
Issued: August 25, 2009
Application No. 10/749,699
Filed: December 30, 2003
Attorney Docket No. 13985-0057002

: 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 DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed July 22, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from 318 days to 319 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 three hundred nineteen (319) days is **GRANTED**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) paid with the petition filed October 26, 2009. No additional fees are required.

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

The application is being forwarded to the Certificates of 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 **three hundred nineteen (319)** days.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,579,439 B2

DATED : August 25, 2009

INVENTOR(S) : Terry B. Strom

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 (318) days

Delete the phrase "by 318 days" and insert – by 319 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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MOTOROLA MOBILITY, INC
600 NORTH US HIGHWAY 45
W2-55BB
LIBERTYVILLE IL 60048-5343

MAILED
SEP 27 2011
OFFICE OF PETITIONS

In re Application of	:	
Kurian Jacob	:	
Application No. 10/749,711	:	DECISION ON PETITION
Filed: December 31, 2003	:	
Attorney Docket No. CS20960RL	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 7, 2011, 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 August 25, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed May 25, 2011. Accordingly, the date of abandonment of this application is September 2, 2011. The Notice of Abandonment was mailed September 9, 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 $1,510 and the publication fee of $300, (2) the petition fee of $1,620; 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 Office of Data Management for processing into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

Please enter. SMD 8/18/10

Patent 7,716,079 **PATENT**

IN UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 7,716,079 Docket No: 2043.022US1

Issue Date: May 11, 2010 Patentee: Amjad Hanif et al.

Customer No.: 49845 Confirmation No.: 9045

Title FEEDBACK CANCELLATION IN A NETWORK-BASED TRANSACTION FACILITY

REQUEST FOR CERTIFICATE OF CORRECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
ATTN: CERTIFICATE OF CORRECTION BRANCH

It is requested that a Certificate of Correction be issued correcting printing errors appearing in the above-identified United States patent. A copy of the text of the Certificate in the suggested form is enclosed.

Authorization to charge Deposit Account No. 19-0743 in the amount of $100.00 to cover the Certificate of Correction Fee.

Issuance of the Certificate of Correction would neither expand nor contract the scope of the claims as properly allowed, and re-examination is not required.

The Examiner is authorized to charge any additional fees or credit overpayment to Deposit Account No.19-0743.

Respectfully Submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6900

Date : May 25, 2010

By: /

James H. Salter
Reg. No: 35,668
JHS:rk

CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450, on this 25 day of May 2010

Kevin Austad
Name

/ /
Signature

PTO/SB/44 (02-01)
PTO/SB/44 (02-01)
Approved for use through 01/31/2004. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO : 7,716,079 Page (1) of 1

DATED : May 11, 2010

INVENTOR(S) : Amjad Hanif 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 page 2, in column 2, under “Other Publications”, line 11, delete “Prelimiary” and insert - - Preliminary - -, therefor.

On page 2, in column 2, under “Other Publications”, line 56, delete “Managment,” and insert - - Management, - -, therefor.

On Sheet 15 of 27, in Serial No. 5, in Figure 14, line 1, delete “oth” and insert - - other - -, therefor.

On Sheet 15 of 27, in Serial No. 5, in Figure 14, line 1, delete “delcines” and insert - - declines - -, therefor.

In column 5, line 51, delete “U’s” and insert - - UIs - -, therefor.

In column 14, line 16, in Claim 22, after “satisfied;” delete “and”.

MAILING ADDRESS OF SENDER:

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
Minneapolis, MN 55402

PATENT NO. _____7,716,079_____

No. of additional copies

⇨ _____

Atty Docket No: 2043.022US1

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 6/7/10

TO SPE OF : ART UNIT 3684

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/749736 Patent No.: 7716079 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:

Approved -- Please enter requested corrections. SMD 8/18/10

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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS MN 55402

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DEC 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,716,079	:	DECISION ON REQUEST FOR
HANIF et al.	:	RECONSIDERATION OF
Issue Date: May 11, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/749,736	:	AND
Filed: December 30, 2003	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. 2043.022US1	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed June 14, 2010, and supplemented on July 26, 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 eight hundred three (803) 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 three (803) days** is **GRANTED**.

The USPTO finance records reveal that the Office charged patentee's Deposit Account twice for the $200.00 fee set forth in 37 CFR 1.18(e). The duplicate $200.00 fee will be refunded in due course.

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 three (803) 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 : 7,716,079 B2

DATED : May 11, 2010 **DRAFT**

INVENTOR(S) : HANIF 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 656 days.

Delete the phrase "by 656 days" and insert – by 803 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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Plumsea Law Group, LLC
10411 Motor City Drive
Suite 320
Bethesda MD 20817

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Patent No. 7,293,993 :
Issue Date: November 13, 2007 :
Application No. 10/749,953 : DECISION ON PETITION
Filed: December 31, 2003 :
Attorney Docket No. ROSE ART-40087 :

This is a decision on the Request For Certificate Of Correction Under 37 C.F.R. § 1.322, filed August 11, 2009, requesting correction on the Title Page of the subject patent to identify the correct assignee's name. The Request is being treated as a Petition Under 37 CFR 3.81(b). A completed Certificate of Correction Form (PTO/SB/44) was submitted September 23, 2008.

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 that 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 name of the assignee's name identified thereon from:

"Rose Art Industries, Inc."

to:

--Mega Brands International, Luxembourg, Zug Branch--

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 September 23, 2008.

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.

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. 7,293,993.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Paul, Hastings, Janofsky & Walker LLP
875 15th Street, N.W.
Washington, D.C. 2005

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
MAY 27 2011
OFFICE OF PETITIONS

WILSON, SONSINI, GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304-1050

In re Application of Chandrika Govardhan, et. al. Application No. 10/749,962 Filed: December 31, 2003 Attorney Docket No. ALTH-007/02US 307255-2086	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40, filed May 9, 2011.

The request is **MOOT**.

A review of the file record indicates that power of attorney to Jessica Wolfe and all the attorneys/agents associated with Customer Number 58249 was revoked by the assignee of the above application on May 19, 2011. Accordingly, the request to withdraw under 37 CFR §§ 1.36(b) or 10.40 is unnecessary.

There is an outstanding Office action mailed on April 18, 2011, that requires a reply from the applicant.

All future communications from the Office will 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) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON, DC 20001

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
400 INTERSTATE NORTH PARKWAY SE
SUITE 1500
ATLANTA, GA 30339

MAILED
FEB 23 2012
OFFICE OF PETITIONS

In re Application of
Randy Dale Curry, et al.
Application No. 10/750,047
Filed: December 31, 2003
Attorney Docket No.: 290701-1062

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed January 19, 2012.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 9, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed March 9, 2011. Accordingly, the application became abandoned on June 10, 2011. A Notice of Abandonment was mailed on June 22, 2011. On January 19, 2012, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that the petitioner has supplied (1) reply in the form of payment of the $870 issue fee and $300 publication fee; (2) the petition fee of $930; and (3) an adequate statement of unintentional delay[1].

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.

/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. While the statement is not made by an attorney of record at the time of abandonment, 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.

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
AUG 23 2011
OFFICE OF PETITIONS

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

In re Application of	:	
Zalenski, et al.	:	
Application No. 10/750,173	:	ON APPLICATION FOR
Filed: December 31, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 101896-719 (DEP-5165)	:	
	:	

This is in response to the "Application for Patent Term Adjustment Pursuant to 37 CFR 1.705(b)", filed August 15, 2011. Applicants submits that the patent term adjustment to be indicated on the patent is one thousand, four hundred and twenty-seven (1,427) days, not one thousand, eight hundred sixteen (1,816) 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 May 16, 2011, a "Determination of Patent Term Adjustment under 35 U.S.C. 154(b)" was mailed indicating that the initial patent term adjustment is 1,816 days. The instant petition under 37 CFR 1.705(b) was filed on August 15, 2011—on the same day that issue fee was paid. Petitioner asserts that the initial patent term adjustment is 1,427 days and states, in pertinent part:

> (ii) Applicant believes that 389 of the PTA days calculated by the PTO actually overlap the 1305 days awarded to the application for a successful appeal, and therefore, the PTA should be reduced by the 389 days;

Excerpt taken from "Application for Patent Term Adjustment Pursuant to 37 CFR 1.705(b)", filed August 15, 2011, p. 2.

A review of the file history reveals that a period of adjustment of 39 days to the patent term was entered pursuant 37 CFR

Applicant's argument has been considered and is persuasive to the extent that the a period of "A" delay and the period of "C" delay appear to overlap 389 days. However, any period of overlap of the "A" delay and the "B" delay and/or the "A" delay and the "C" delay is determined at the time the patent issues and made a part of the revised determination of patent term adjustment. It is further noted that the reducing the patent term adjustment for the instant overlap consideration prior to the issuance of the patent would be premature and likely result in a duplicate reduction at the time the patent issues. As such, it is concluded that reduction of the patent term to account for the overlap of "A" and "C" delay periods is properly deferred until the patent issues.

It is noted that applicant has not presented any other issue that would be properly treated under 37 CFR 1.705(b).

In view thereof, the petition is DISMISSED.

The petition fee of $200.00 fee set forth in 37 CFR 1.18(e) will be charged to deposit account 14-1449. 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[1]).

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

---

[1] 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).

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

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

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

MAILED
AUG 22 2011
OFFICE OF PETITIONS

In re Application of :
Edward B. Zalenski, et al :
Application No.: 10/750,173 : ON PETITION
Filed: December 31, 2003 :
Attorney Docket No.: 101896-719 (DEP-5165) :

This is a decision on the petition, filed August 19, 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 August 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3775 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.*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

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MAR 06 2012
OFFICE OF PETITIONS

In re Application of	:	
Marmaros et al.	:	ON APPLICATION FOR
Application No. 10/750183	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 12/31/2003	:	INCLUDING REQUEST FOR
Attorney Docket Number:	:	RECONSIDERATION
16113-1317001 / GP-178-00	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed January 30, 2012. Applicant petitions for reconsideration of the patent term adjustment to one hundred ten (110) days, eighty (80) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction based upon an assertion that the Office erred in calculating reductions of two (2) days; one (1) day and 27 days.

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 reductions of one (1) day; 51, days and 27 days is **GRANTED TO THE EXTENT INDICATED**.

On October 31, 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 eighty (80) days.

On January 30, 2012, Applicant timely submitted the instant application for patent term adjustment[1]. Applicant requests that the Determination of Patent Term Adjustment be corrected from eighty (80) days, as indicated on the Determination of PTA mailed October 31, 2011, to an adjustment of one hundred ten (110) days. Applicant avers that the Office incorrectly charged Applicant with reductions of one (1) day; 51 days, and 27 days of delay.

Applicant asserts that the Office erred in calculating delays two (2) days; one (1) day and 27 days. The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed October 31, 2011 indicates a patent term of eighty (80) days. The present request for reconsideration of patent term adjustment indicates that the Office may have erred in calculating reductions of one (1) day; 51, days and 27 days of delay in connection with (1) the filing of a reply on Wednesday,

[1] PALM records show that the Issue Fee payment was received in the Office on January 30, 2012.

November 12, 2008, (2), the filing of a reply on Monday, September 14, 2009, and the filing of an Information Disclosure Statement on July 1, 2010.

Office records reveal that a reply to an Office action mailed August 11, 2008, was filed on Wednesday, November 12, 2008, and that Tuesday, November 11, 2008 was a Federal Holiday within the District of Columbia. Accordingly, the period of reduction of one (1) day entered for the reply is not warranted and is being removed.

Office records reveal further that a reply to an Office action, mailed June 12, 2009, was filed on November 2, 2009. The Office assessed a reduction of 51 days, beginning on the day after the date that is three months after the reply was due, September 13, 2009, and ending on the date the reply was filed, November 2, 2009. However, the due date for the reply, September 12, 2009, fell on a weekend. Accordingly, the due date for the reply was Monday, September 14, 2009, and the period of reduction is properly calculated beginning on Tuesday, September 15, 2009, and ending on the date the reply was filed, and a reduction of 49 days is appropriate.

As to the assertion that the Office errered in assessing Applicants a reduction of 27 days in connection with the filing of an IDS on July 1, 2010, Applicant asserts that the IDS was accompanied by a statement in compliance with 37 CFR 1.704(d). However, a review of the statement accompanying the IDS filed on July 1, 2010, reveals that the statement lacked the assertion "that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement." Applicants' argument that the 27-day period of reduction for applicant delay should be removed is therefore 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 27 days for applicant delay is proper and will not be removed.

A further review of Office records reveals that the Office erred in calculating an adjustment of three (3) days in connection with the filing of a reply to an Office communication mailed June 26, 2006, on September 29, 2006. Office records confirm that the due date for the reply, September 26, 2006, fell on a weekend and that the due date for the reply was therefore Monday, September 28, 2006, and the period of reduction is properly calculated beginning on the day after the date that the reply was due, September 29, 2006, and ending on September 29, 2006, the date the reply was filed, and is one (1) day.

In view thereof, as of the time of allowance, the application is entitled to an overall patent term adjustment of eighty five (85) days (adjustments of 484 days less reductions of 399 days), subject to any terminal disclaimer.

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

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for

Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

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SUITE 1350, 1628 JOHN F KENNEDY BLVD
PHILADELPHIA PA 19103

In re Application of	:	
Richard L. Franklin	:	DECISION ON
Application No. 10/750,184	:	APPLICATION FOR
Filed: Dec. 31, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	
ARC-1001USCON1	:	

This is a decision on the "REQUUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT" filed on December 29, 2010. Applicants request that the Patent Term Adjustment for the above-identified patent be increased by 457 days from 51 days to 508 days.

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

The Office has updated the PALM and PAIR screens to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is FIVE HUNDRED EIGHT (508) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 30, 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 51 days (824 days of Office delay less 773 days of applicant delay). The subject application for patent term adjustment was timely filed on December 29, 2010.[1]

Applicants dispute the reduction of 457 days for the filing of an supplemental response on December 7, 2007, 457 days after the day after the date a reply was filed, September 6, 2006.

Applicants assert that the paper filed on December 7, 2007, was a correction to the petition under 37 CFR 1.78, filed on August

[1] Office PALM records indicate that the issue fee was paid on December 29, 2010.

23, 2006, rather than a supplemental reply to the Office action mailed on May 22, 2006, to which the original response was filed on September 6, 2006.

37 CFR 1.704(c)(8) provides that the filing of a supplemental reply, other than one expressly requested by the examiner, constitutes a failure to engage in reasonable efforts to conclude processing or examination.

The record has been reviewed and it is concluded that, under the circumstances of this case, the response filed on December 7, 2007 is not a supplemental response or other paper within the meaning of 37 CFR 1.704(c)(8). Accordingly, the 457 day reduction is not warranted and will be removed.

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

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance is revised to 508 days (824 days of PTO delay, reduced by 316 (773 - 457) days of Applicant delay).

The application is being forwarded to the Office of Data Management to await payment of the issue fee. Upon timely payment of the issue fee, 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 Wood
Senior Petitions Attorney
Office of Petitions

Encl: Revised PAIR Calculation

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/750,184

Filing or 371(c) Date:	12-31-2003	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	824
A Delays:	824	PTO Manual Adjustments:	457
B Delays:	0	Applicant Delays:	773
C Delays:	0	Total PTA Adjustments:	508

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO(Days)	APPL (Days)	Start
119	04-19-2011	Adjustment of PTA Calculation by PTO	457		0
110	09-30-2010	Mail Notice of Allowance			94
109	09-28-2010	Issue Revision Completed			0
108	09-28-2010	Document Verification			0
107	09-28-2010	Notice of Allowance Data Verification Completed			0
106	09-23-2010	Allowability Notice			0
103	09-20-2010	Date Forwarded to Examiner			0
102	09-21-2010	Mail Appeals conf. Rej. withdrawn			0
99	09-16-2010	Pre-Appeals Conference Decision - Rejection Withdrawn			0
97	09-08-2010	case Inherited			0
96	09-08-2010	Case Docketed to Examiner in GAU			0
95	09-01-2010	Request for Pre-Appeal Conference Filed			0
94	09-01-2010	Notice of Appeal Filed		92	92
93	09-01-2010	Request for Extension of Time - Granted			0
92	03-01-2010	Mail Final Rejection (PTOL - 326)			0
91	02-26-2010	Final Rejection			0
86	12-17-2009	Date Forwarded to Examiner			0
85	12-11-2009	Response after Non-Final Action		90	82
84	12-11-2009	Request for Extension of Time - Granted			0
83	06-26-2009	Filing Receipt - Corrected			0
82	06-12-2009	Mail Non-Final Rejection			0
81	06-11-2009	Non-Final Rejection			0
80	05-28-2009	Mail-Petition Decision - Dismissed			0
79	05-28-2009	Petition Decision - Dismissed			0
78	03-14-2006	Petition Entered			0
77	04-08-2009	Date Forwarded to Examiner			0
76	04-01-2009	Supplemental Response		43	70
73	03-03-2009	Date Forwarded to Examiner			0
72	02-17-2009	Amendment Submitted/Entered with Filing of CPA/RCE			0
71	03-03-2009	Date Forwarded to Examiner			0
70	02-17-2009	Request for Continued Examination (RCE)			60
69	03-03-2009	Disposal for a RCE / CPA / R129			0
68	02-17-2009	Request for Extension of Time - Granted			0
67	02-17-2009	Workflow - Request for RCE - Begin			0
66	11-26-2008	Mail Advisory Action (PTOL - 303)			0
65	11-25-2008	Advisory Action (PTOL-303)			0
62	10-21-2008	Date Forwarded to Examiner			0
61	07-17-2008	Amendment/Argument after Notice of Appeal			0
60	07-17-2008	Notice of Appeal Filed		91	55
59	07-17-2008	Request for Extension of Time - Granted			0
57	08-11-2008	Filing Receipt - Corrected			0

56	07-25-2008	CRF Is Good Technically / Entered into Database			0
55	01-17-2008	Mail Final Rejection (PTOL - 326)	376		41
54	01-16-2008	Final Rejection			0
53	09-06-2006	Information Disclosure Statement considered			0
50	01-14-2008	Mail-Petition Decision - Granted			0
49	01-14-2008	Petition Decision - Granted			0
48	01-10-2008	Filing Receipt - Corrected			0
47	12-14-2007	Date Forwarded to Examiner			0
46	12-07-2007	Supplemental Response		457	41
45	11-09-2007	Filing Receipt - Corrected			0
44	09-06-2006	Reference capture on IDS			0
43	09-06-2006	Information Disclosure Statement (IDS) Filed			0
42	09-14-2007	Date Forwarded to Examiner			0
41	09-06-2006	Response to Election / Restriction Filed			0
40	09-06-2007	Request for Extension of Time - Granted			0
39	09-06-2006	Information Disclosure Statement (IDS) Filed			0
38	08-23-2006	Petition Entered			0
37	08-29-2006	Correspondence Address Change			0
36	07-06-2006	Mail Supplemental Restriction / Election Requirement			0
35	06-29-2006	Supplemental Restriction			0
34	06-16-2006	Correspondence Address Change			0
33	06-19-2006	Change in Power of Attorney (May Include Associate POA)			0
32	05-22-2006	Mail Restriction Requirement	448		-1
31	05-17-2006	Restriction/Election Requirement			0
30	08-30-2005	Correspondence Address Change			0
29	11-16-2004	Case Docketed to Examiner in GAU			0
28	11-16-2004	IFW TSS Processing by Tech Center Complete			0
27	07-01-2004	Preliminary Amendment			0
26	12-31-2003	Preliminary Amendment			0
25	10-28-2004	Application Return from OIPE			0
24	10-28-2004	Application Is Now Complete			0
23	10-28-2004	Application Return TO OIPE			0
22	10-28-2004	Application Return from OIPE			0
21	10-28-2004	Application Return TO OIPE			0
20	10-28-2004	Application Return from OIPE			0
19	10-28-2004	Application Is Now Complete			0
18	10-28-2004	Pre-Exam Office Action Withdrawn			0
17	10-28-2004	Application Return TO OIPE			0
16	10-27-2004	Application Dispatched from OIPE			0
15	10-27-2004	Application Is Now Complete			0
14	10-27-2004	Correspondence Address Change			0
13	07-01-2004	Workflow incoming amendment IFW			0
12	05-10-2004	Notice Mailed--Application Incomplete--Filing Date Assigned			0
5	03-11-2004	Cleared by L&R (LARS)			0
4	02-26-2004	Referred to Level 2 (LARS) by OIPE CSR			0
3	02-26-2004	CASE CLASSIFIED BY OIPE			0
2	01-22-2004	IFW Scan & PACR Auto Security Review			0
1	12-31-2003	Initial Exam Team nn			0

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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
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 030221	Patent Number: 7,664,519
Filing Date (or 371(b) or (f) Date): 12-30-2003	Issue Date: 2-16-2010
First Named Inventor: CHIH-PING HSU	
Title: POWER CONTROL FOR MULTIPLE TRANSPORT CHANNELS IN A WIRELESS COMMUNICATION SYSTEM	

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 08-02-2010
Name (Print/Typed) Eric Ho	Registration Number 39711

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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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/13/2010

Applicant	: Chih-Ping Hsu	: DECISION ON REQUEST FOR
Patent Number	: 7664519	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/750,302	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 12/30/2003	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **384** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Application of
Kol, et al.
Application No. 10/750,378
Filed: December 31, 2003
Atty. Dkt. No: 2002P10171US01 (S33.024)

: DECISION ON PETITION

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed September 14, 2010.

This application was held abandoned for failure to timely submit a proper reply to the non-final Office action mailed November 24, 2009. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed June 23, 2010.

Petitioners assert non-receipt of the non-final Office action. Petitioners indicate that a search of the file jacket and the docket records indicate that the non-final Office action was not received. Petitioner has included, *inter alia*, copies of docket records for the instant application which purport to establish non-receipt of the non-final Office action.

The showing required to establish non-receipt 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 non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The instant petition and accompanying documents have been carefully reviewed and found in compliance with the procedures to establish non-receipt of an Office communication set forth at MPEP 711.03(c).

Accordingly, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **GRANTED**. The holding of abandonment is WITHDRAWN and the Notice of Abandonment is hereby VACATED.

This application is being forwarded to Group Art Unit 2456 for consideration of the reply to the non-final Office action submitted herewith.

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

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In re Patent No. 7,612,370	:	DECISION ON REQUEST FOR
HANNAH et al.	:	RECONSIDERATION OF
Issue Date: 11/03/2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/750,488	:	NOTICE OF INTENT TO ISSUE
Filed: 12/31/2003	:	CERTIFICATE OF CORRECTION
Attorney Docket No. P18191	:	

This is a decision on the APPLICATION FOR POST ISSUE PATENT TERM AJDUSTMENT UNDER 37 C.F.R. § 1.705(b), filed on May 20, 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 one thousand four hundred seventy-five (1475) days.

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

In the present petition, applicants assert the correct patent term adjustment is 1475 days, which they calculated as follows:

> *The date that is four months after the Issue Fee Payment was recorded/ verified on August 11, 2008 by USPTO is December 11, 2008. The Original Letters Patent was issued on November 3 2009. The difference between these two dates is 327 days credit to Applicants' patent term. The USPTO has failed to take into account these NON-OVERLAPPING Post-*

Issue A-Delay of 327 days incurred as a result of late issuance of the Patent.

STATEMENT, 05/20/10, p. 1.

A review of the PALM calculations for this application reveals that the patent term adjustment at the time of the mailing of the notice of allowance was 112 days. Thereafter, applicant was assessed 2 days of delay pursuant to 37 CFR 1.704(b) for failing to respond to the Notice of Allowance and Fees Due within three months of its mailing date. Additionally, the Office was assessed 327 days of delay pursuant to 37 CFR 1.702(a)(4) for failing to issue the patent no later than four months after the date on which the issue fee was paid and all outstanding requirements were satisfied and 1038 days of delay pursuant to 37 CFR 1.702(b) for failing to issue the patent within three years of the actual filing date of the application. However, the record reveals that 327 days **overlap** between A Delay and B Delay, beginning on December 12, 2008, and ending on November 3, 2009. See 35 USC 154(b)(2)(A) and 37 CFR 1.137(f). Thus, the record shows that the revised determination includes the 327 days (albeit overlapping days) for Office delay in issuing the patent pursuant to 37 CFR 1.702(a)(4) in calculating the patent term adjustment of 1148 days indicated in the patent. Accordingly, an increase of the patent term adjustment to 1475 days is not warranted.

In view of thereof, the patent properly issued with a patent term adjustment of 1148 days (542 days of A delay + 1038 days of B delay - 327 days of overlap - 104 days of applicant delay).

The Office acknowledges the submission 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

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BRINKS HOFER GILSON & LIONE
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CHICAGO IL 60610

In re Patent No. 7,655,002
Issued: February 2, 2010
Application No. 10/750,789
Filed: January 2, 2004
Dkt. No.: 12212/39

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the request for review of patent term adjustment timely filed on March 2, 2010. This matter is being properly treated under 37 CFR 1.705(d).

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

The above-identified application matured into U.S. Pat. No. 7,655,002 on February 2, 2010. The patent issued with a patent term adjustment of 679 days. The instant application for patent term adjustment was timely filed March 2, 2010.

The calculation of adjustment has been carefully reviewed, along with the arguments presented by patentees. Herein follows the calculation of adjustment.

The patent is entitled to an overall adjustment of 1244 days.

The patent is entitled to an adjustment of 933 days pursuant to 37 CFR 1.702(a)(1).

The patent is entitled to an adjustment of 31 days pursuant to 37 CFR 1.702(a)(2).

The application is entitled to an adjustment of 518 days pursuant to 37 CFR 1.702(b), from January 3, 2007 to June 3, 2008. 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 January 3, 2007 and ends on June 3, 2008, the day before the RCE was filed, and not June 4, 2008, the day of filing of the RCE. See, 35 U.S.C. 154(b)(1)(B)(i)..

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 518 days under 37 CFR 1.702(b) does not include 27 days, from May 8, 2008, the date that the Notice of Appeal was filed, to June 3, 2008, the day before the date that the RCE was mailed. Supra.

The period of applicant delay totals 211 days.

The patent term adjustment is subject to a reduction of 105 days pursuant to 37 CFR 1.704(c)(8) in connection with the supplemental reply filed February 4, 2008.

The patent term adjustment is subject to a reduction of 106 days pursuant to 37 CFR 1.704(c)(10) in connection with the post-allowance submission filed October 20, 2009.

In view thereof, the patent is entitled to an overall adjustment of 1244 days (964 days under § 1.702(a) + 518 days under § 1.702(b) – 27 days under § 1.702(b)(4) – 211 days of applicant delay under § 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).

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

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 1244 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 : 7,655,002

DATED : February 2, 2010 **DRAFT**

INVENTOR(S) : Myers

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 679 days

Delete the phrase "by 679 days" and insert – by 1244 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAYER BROWN, LLP
PO BOX 2828
CHICAGO, IL 60690

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of
Soon Won Hong, et al.
Application No. 10/750,832
Filed: January 5, 2004
Attorney Docket No. P66472US1

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 5, 2010.

The request is **NOT APPROVED**.

The Office will not decide request to withdraw from representation as practitioner of record which are filed after the patent has issued. Sections 2540 and 2542 of the Manuel of Patent Procedures (MPEP explain that a practitioner does not have to request permission to withdraw as practitioner of record under 37 CFR 1.36 in order to change the address in a patented filed and to directed notices, receipts and other communications relating to maintenance fees. These requests will be placed in the application but will not be treated on their merits. The above mentioned sections of the MPEP recommend the designation of a fee address or submission of a change in correspondence address in the patented file for directing correspondence relating to maintenance fee payments and other correspondences after issuance. See Form PTO/SB/47, entitled, *"Fee Address" Indication Form* and Form PTO/SB/123, entitled, *Change of Correspondence Address, Patent*

Accordingly, the request to withdraw from record cannot be approved because the request does not include an acceptable current correspondence address for future communications from the Office.

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 571-272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

11-30-2010

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

Patent No. : 7,812,010 B2
Ser. No. : 10/751,056
Inventor(s) : Gerianne Tringali, et. al.
Issued : October 12, 2010

Re: Request for Certificate of Correction

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

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

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

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

A. **the processing fee set forth in 37 CFR 1.17(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.

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3422 or 703- 756 -1580

Charles Vorndran
PABST PATENT GROUP LLP
1545 Peachtree Street
Suite 320
Atlanta, Georgia, 30309

ej

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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Pabst Patent Group LLP
1545 PEACHTREE STREET NE
SUITE 320
ATLANTA GA 30309

MAILED
FEB 16 2011
OFFICE OF PETITIONS

In re Patent No. 7,812,010 :
Issue Date: October 12, 2010 :
Application No. 10/751,056 : ON PETITION
Filed: January 2, 2004 :
Attorney Docket No. FEM 104 :

This is a decision on the petition filed December 29, 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**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3215. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Charlema Grant
Petitions Attorney
Office of Petitions

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6986321	2006-01-17	10751218	2003-12-31	62727.00

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	/Michael J. Bradford/	Date (YYYY-MM-DD)	2012-01-13
Name	Michael J. Bradford	Registration Number	52646

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No.	6986321	:
Issue Date:	January 17,2006	
Application No.	10751218	:DECISION GRANTING PETITION
Filed:	December 31,2003	:UNDER 37 CFR 1.378(c)
Attorney Docket No.	002-54A	:

This is a decision on the electronic petition, filed January 13,2012 ,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 January 13,2012 . 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.

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

Beck & Tysver, P.L.L.C
Suite 100
2900 Thomas Avenue S.
Minneapolis MN 55416

MAILED
JAN 27 2012
OFFICE OF PETITIONS

In re Application of :
Krutsch et al. :
Application No. 10/751221 :
Filing or 371(c) Date: 01/02/2004 :
Title of Invention: :
PRODUCTIVITY :
APPLICATION MANAGEMENT : ON PETITION

This is a decision on the Petition to Revive an Unintentionally Abandoned Application Under 37 CFR 1.137(b), filed December 12, 2011.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under [insert the applicable code section]". This is not final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely reply to the non-final Office action, mailed July 6, 2007. The Office action set a three (3) month period for reply. Extensions of time under 37 CFR 1.136(a) were available. No complete and proper reply having been received, the application became abandoned on October 7, 2007. A Notice of Abandonment was mailed April 14, 2008.

The present petition

Petitioner, one of three inventors, files the present petition, an amendment, and change of address in reply to the Office action.

Applicable law, Rules and MPEP

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

Analysis

As to item (3), the present petition is not signed by all inventors. Petitioner herein may state 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, however, Petitioner herein was not solely responsible for prosecuting the application. Office records reveal that during the period of abandonment (and continuing to the present), inventors Kenneth Krutsch and Michael Burger were also responsible for prosecuting the application.

Petitioner has made 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; however, the person signing the statement of unintentional delay was not responsible for prosecuting the application during the period of abandonment, and is therefore not in a position to state that the entire delay in filing the required reply was unintentional.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
>
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
>
> (3) An assignee as provided for under §3.71(b) of this chapter; or
>
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Because the petition has not been properly signed, the petition is dismissed. A properly executed petition, signed by a proper party as listed above in 37 CFR 1.33, is required before the merits of the petition may be considered.

Moreover, the change of correspondence address is also unacceptable. The MPEP 601.03 provides:

Where a correspondence address has been established on filing of the application or changed pursuant to 37 CFR 1.33(a)(1) (prior to the filing of an executed oath or declaration under 37 CFR 1.63 by any of the inventors), that correspondence address remains in effect upon filing of an executed oath or declaration under 37 CFR 1.63 and can only be subsequently changed pursuant to 37 CFR 1.33(a)(2). Under 37 CFR 1.33(a)(2), where an executed oath or declaration under 37 CFR 1.63 has been filed by any of the inventors, ***the correspondence address may be changed by (A) a patent practitioner of record, (B) an assignee as provided for under 37 CFR 3.71(b), or (C) all of the applicants (37 CFR 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 37 CFR 3.71***. See 37 CFR1.33(a)(2).

Conclusion

The petition is dismissed without prejudice. Petitioner may filed a request for reconsideration of petition and include a properly signed petition.

Regarding the correspondence address, a proper change of address has not been filed in this case, and the address given on the petition differs from the address of record. A proper 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: Director 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 regarding this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

CC: JAMES L. RICE III
2208 W. 21ST STREET
MINNEAPOLIS, MN 55405

UNITED STATES PATENT AND TRADEMARK OFFICE

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JAMES L. RICE III
2208 W. 21ST STREET
MINNEAPOLIS MN 55405

MAILED
APR 13 2012
OFFICE OF PETITIONS

In re Application of	:	
Krutsch et al.	:	
Application No. 10/751221	:	
Filing or 371(c) Date: 01/02/2004	:	ON PETITION
Attorney Docket Number:	:	
2734	:	

This is a decision on the renewed Petition under 37 CFR 1.137(b), filed March 13, 2012, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed July 6, 2007. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No complete and proper reply having been received, the application became abandoned on October 7, 2007.

The renewed 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 renewed 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 2194 for processing of the Amendment filed with the petition in due course.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,176,713	2007-02-13	10/751,324	2004-01-05	TIER-0003

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	/Jose S. Garcia/	Date (YYYY-MM-DD)	2011-08-31
Name	Jose S. Garcia	Registration Number	43628

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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United States Patent and Trademark Office
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In re Patent No. 7176713
Issue Date: February 13,2007
Application No. 10751324
Filed: January 5,2004
Attorney Docket No.

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

This is a decision on the electronic petition, filed August 31,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 31,2011 .
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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HAYES, SOLOWAY P.C.
130 W. CUSHING STREET
TUCSON, AZ 85701

MAILED

OCT 07 2010

OFFICE OF PETITIONS

In re Application of	:	
Kevin C. Unbedacht, et al.	:	
Application No. 10/752,048	:	DECISION ON PETITION
Filed: January 6, 2004	:	TO WITHDRAW
Attorney Docket No. GSH 08-879283 CON	:	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 15, 2010.

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

A review of the file record indicates that the power of attorney to Hayes, Soloway P.C. has been revoked by the assignee of the patent application on September 24, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **THE LAW OFFICE OF MICHAEL E. KONDOUDIS**
888 16TH STREET, N.W.
SUITE 800
WASHINGTON DC 20006

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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HAYES, SOLOWAY P.C.
130 W. CUSHING STREET
TUCSON, AZ 85701

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of	:	
Kevin C. Unbedacht, et al.	:	
Application No. 10/752,048	:	DECISION ON PETITION
Filed: January 6, 2004	:	TO WITHDRAW
Attorney Docket No. GSH 08-879283 CON	:	FROM RECORD
	:	

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 19, 2010.

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

A review of the file record indicates that the power of attorney to Hayes, Soloway P.C. has been revoked by the assignee of the patent application on September 24, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **THE LAW OFFICE OF MICHAEL E. KONDOUDIS**
888 16TH STREET, N.W.
SUITE 800
WASHINGTON DC 20006

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

Mail Date: 08/04/2010

Applicant	: Allan Cameron	: DECISION ON REQUEST FOR
Patent Number	: 7651459	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/752,164	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/06/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **924** 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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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of	:	
Moloudi, et al.	:	
Application No. 10/752,191	:	ON APPLICATION FOR
Filed: January 6, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. 15265US03	:	

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. § 1.705), filed September 22, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is at a minimum one thousand three hundred fourteen (1314) days, not one hundred seventy-seven (177) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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).

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[1] 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.

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
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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500 WEST MADISON STREET
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OFFICE OF PETITIONS

In re Application of	:	
Qiu et al.	:	
Application No. 10/752336	:	ON APPLICATION FOR
Filing or 371(c) Date: 01/06/2004	:	PATENT TERM ADJUSTMENT
Atty Docket No.:	:	
15190US02	:	

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE, filed September 9, 2010. Applicant requests that the Patent Term Adjustment be changed to reflect 2129 days, not 975 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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,396	01/06/2004	Luis Eduardo Gutierrez-Sheris	25153-014	3579

32137 7590 05/18/2011
PATENT DOCKET CLERK
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER
WINTER, JOHN M

ART UNIT	PAPER NUMBER
3685	

MAIL DATE	DELIVERY MODE
05/18/2011	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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MAY 18 2011

Patent Docket Clerk
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036

In re Application of	:	
Luis Eduardo Gutierrez-Sheris	:	DECISION ON PETITION TO
Application No. 10/752,396	:	TO ACCORD AN
Filed: January 6, 2004	:	EARLIER FILING DATE
For: MONEY-TRANSFER TECHNIQUES		

This is in response to applicant's petition filed August 21, 2008 to accord a timely filing date to an Information Disclosure Statement (IDS) submission, a copy of which has been filed with the instant petition. The delay in treating this petition is sincerely regretted.

The petition is **GRANTED**.

A review of the file record indicates that there is no record of an IDS being received between May 17, 2004 and June 1, 2004.

The applicant alleges that he submitted an IDS on May 17, 2004 which was received by the USPTO on June 1, 2004. The copy of the IDS included with the petition also includes a copy of a post card receipt identifying the IDS and which has stamped thereon a USPTO Mail Room receipt date stamp of June 1, 2004. This is acceptable evidence that the above-noted submission was filed on that day.

Since the IDS was timely filed prior to a first Office action, the IDS is acceptable for entry into the file and for consideration by the examiner. Therefore, the copy of the IDS will be entered and the application forwarded to the examiner for consideration of the prior art listed.

Telephone inquiries relative to this decision should be directed to Quality Assurance Specialist Steven Meyers at (571) 272-6611.

Wynn Coggins, Director
Patent Technology Center 3600
(571) 272-5350

SM/sm: 5/16/11

SM

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AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 PARK AVENUE
NEW YORK, NY 10016

MAILED

SEP 2 2 2010

OFFICE OF PETITIONS

In re Application of
Erik BUNTINX
Application No. 10/752,423
Filed: January 6, 2004
Attorney Docket No. **29248/19**

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 September 21, 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 August 27, 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 1627 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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ADE & COMPANY INC.
2157 HENDERSON HIGHWAY
WINNIPEG MB R2G1P-9 CA CANADA

MAILED

JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of Robert Watson Application No. 10/752,553 Filed: January 8, 2004 Attorney Docket No. 85366-102 RWD	: : : : :	DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 28, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 29, 2005. A Notice of Abandonment was mailed January 13, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $750.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3632 for 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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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

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JUL 18 2011

OFFICE OF PETITIONS

In re Patent No. 7,119,027	:	
Issue Date: October 10, 2006	:	
Application No. 10/752,571	:	ON PETITION
Filed: January 8, 2004	:	
Attorney Docket No. 566.43403X00	:	

This is a decision on the petition filed June 30, 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 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

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

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AT&T LEGAL DEPARTMENT – PIP LAW LLC
ATTN: PATENT DOCKETING
ONE AT&T WAY
ROOM 2A-207
BEDMINSTER NJ 07921

In re Application of	:	
BATSON	:	
Application No. 10/752,777	:	DECISION ON PETITION
Filed: January 7, 2004	:	
Docket No. C02-0099-000	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 31, 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 1, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 2, 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) and 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 December 31, 2010, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to Petitioner's Deposit Account No. 50-3447.

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 2617 for appropriate action by the Examiner in the normal course of business.

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

cc: MICKKI D. MURRAY
PARKS IP LAW LIC
1117 PERIMETER CENTER W, SUITE E402
ATLANTA, GA 30338

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

MAILED
NOV 22 2011
OFFICE OF PETITIONS

Patent No. 7,391,381	:	
Application No. 10/752,794	:	
Filed: January 7, 2004	:	ON PETITION
Issued: June 24, 2008	:	
Attorney Docket No. RDA-0004	:	

This is a decision on the petition under 37 CFR 1.378(c), filed October 25, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED as involving a moot issue**.

A petition under 37 CFR 1.378(c) to accept the delayed payment of maintenance fee in an expired patent is not necessary in the instant patent, as the patent has not expired. The Maintenance Fee Window dates for the 3.5-year maintenance fee are as follows:

Open Date: June 24, 2011
Surcharge Date: December 28, 2011
Close Date: June 25, 2012

The instant patent will not expire unless the maintenance fee and late surcharge are not submitted on or prior to June 25, 2012.

However, petitioner has also submitted a Request for Refund of Fees Pursuant to 37 CFR 1.26 on November 3, 2011, noting that the instant petition was submitted in error and requesting a refund of $2205.00 As requested, the $2205.00 submitted with the instant petition will be credited to petitioner's deposit account in due course.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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Goodwin Procter, LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

MAILED
NOV 10 2011
OFFICE OF PETITIONS

In re Patent No. 6,977,621	:	
Issue Date: December 20, 2005	:	
Application No. 10/752,796	:	ON PETITION
Filed: January 7, 2004	:	
Patentees: Kenneth C. Kelly, et. al.	:	

This is a decision on the petition under 37 CFR 1.378(c), filed on October 25, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

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

In re Patent No. 7,227,508	:	
Issue Date: June 5, 2007	:	
Application No. 10/752,797	:	DECISION ON PETITION
Filed: January 7, 2004	:	
Attorney Docket No. RDA-0006	:	

This is a decision on the petition under 37 CFR 1.378(c), filed October 25, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 6, 2011 for failure to pay the first maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

Petitioner is charged $1640 for the petition under 37 CFR 1.20(i)(2) and an additional $563 for the maintenance fee due at 3.5 years under 37 CFR 1.20(e). Petitioner has been charged $2 on October 28, 2011. As such, the balance of $2203 will be charged to Petitioner's deposit account no. 50-4634.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Joanne Hama at (571) 272-2911 or to the undersigned at (571) 272-7099.

The patent file is being forwarded to Files Repository.

David Bucci
Petitions Examiner
Office of Petitions

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NOV 10 2011
OFFICE OF PETITIONS

Goodwin Procter, LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

In re Patent No. 7,202,832	:	
Issue Date: April 10, 2007	:	
Application No. 10/752,803	:	ON PETITION
Filed: January 7, 2004	:	
Patentees: Wenzhang Wang	:	

This is a decision on the petition under 37 CFR 1.378(c), filed on October 25, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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MINNEAPOLIS MN 55440-1022

MAILED

SEP 19 2011

OFFICE OF PETITIONS

In re Patent No. 7,979,397	: DECISION ON
Margolus, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/752,844	: of PATENT TERM ADJUSTMENT
Issue Date: July 12, 2011	: and
Filed: January 7, 2004	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 11656-0004004	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed September 12, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from two hundred seventy (270) days to three hundred fifty-eight (358) days.

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

On July 12, 2011, the instant application matured into U.S. Patent No. 7,979,397 with a patent term adjustment of two hundred seventy (270) days. The Office determined a patent term adjustment of 270 days based upon 525 days of "A" delay plus 296 days of "B" delay, reduced by 551 days of Applicant delay.

Patentees argue that even though they filed an RCE on October 31, 2007, they should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on March 4, 2011 until the issue date of the patent. In other words, Patentee argues that no continued examination took place during this time period, and the Office should be accorded 131 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 296 days based on the application having been filed under 35 U.S.C. 111(a) on January 7, 2004 and a

request for continued examination under 132(b) having been filed on October 31, 2007. In other words, the 131 day period beginning on the date of mailing of the Notice of Allowance on March 4, 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. 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).

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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.

Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

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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.

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 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 October 31, 2007, and the patent issued by virtue of that request on July 12, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on October 31, 2007 and ending on July 12, 2011 is not included in calculating Office delay.

In addition, Patentees also argue that they should not have been assessed two (2) days of Applicant delay pursuant to 37 CFR 1.704(b). A review of the record reveals that Applicants filed the issue fee on June 6, 2011, in response to a Notice of Allowance mailed on March 4, 2011. As June 4, 2011 fell on a Saturday (*see* 37 CFR 1.7(a)), the issue fee was timely filed, and no applicant delay should have been assessed for this filing. For the same reason, Applicants should not have been assessed ninety-three (93) days of Applicant delay for their reply filed on December 13, 2010, but rather should have only been assessed ninety-one (91) days.

Lastly, Patentees also point out that they should have been assessed additional Applicant delay of forty-seven (47) days for filing a supplemental reply under 37 CFR 1.704(c)(8). Applicants filed

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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.

an IDS on December 17, 2007, subsequent to a reply filed on October 31, 2007. Accordingly, forty-seven (47) days of Applicant delay should have been assessed.

In view thereof, the correct number of days of patent term adjustment is **two hundred twenty-seven (227)** days (525 days of "A" delay plus 296 days of "B" delay, reduced by 594 (92+90+47+92+92+90+91) days of Applicant 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 **two hundred twenty-seven (227) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,979,397 B2

DATED : **July 12, 2011**

INVENTOR(S) : Margolus 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 270 days.

Delete the phrase "by 270 days" and insert – by 227 days--

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MAILED
JUN 20 2011
OFFICE OF PETITIONS

In re Patent of Margolus	:	
Patent No. 7,912,855	:	
Issue Date: March 22, 2011	:	DECISION ON PETITION
Application No. 10/752,848	:	
Filing Date: January 7, 2004	:	
Attorney Docket No. 11656-0004006	:	

This is a decision on the "Application for Patent Term Adjustment Under 37 C.F.R. § 1.705(d)" filed May 23, 2011, 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 three hundred fifty-one (351) days.

The petition is **dismissed**.

Pursuant to 35 U.S.C. § 1.154(b)(1)(B)(i), the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") does not include "any time consumed by continued examination of the application."

The petition argues the "time consumed by continued examination of the application" does not include the time period beginning on the date the Office issued the Notice of Allowance and ending on the date the Office issued the patent.

"Once a request for continued examination ... 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)."[1] In other words, the time period consumed by continued examination of the application ends on the date a patent is issued, not the day before the date a Notice of Allowance is issued.

The petition asserts the proper period of B Delay is 418 days, not 283 as calculated by the Office.

The application was filed January 7, 2004. The first request for continued examination ("RCE") filed in this case was filed October 18, 2007. The patent issued March 22, 2011.

[1] Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (September 18, 2000) (response to comment 8)

37 C.F.R. § 1.703(b)(1) states,

> 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.

The number of days beginning January 8, 2007, the day after the date three years after the filing date, and ending March 22, 2011, the date the patent issued, is 1,535 days, and the number of days beginning October 18, 2007, the date the RCE was filed, and ending March 22, 2011, the date the patent issued, is 1,252 days. Therefore, the correct period of B Delay is 283 (1,535 - 1,252) days, as previously calculated by the Office.

In view of the prior discussion, the Office properly calculated the period of B Delay and the patent term adjustment remains 216 days.

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

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

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In re Patent of Margolus	:	
Patent No. 7,912,855	:	FINAL AGENCY DECISION ON
Issue Date: March 22, 2011	:	REQUEST FOR RECONSIDERATION
Application No. 10/752,848	:	OF PATENT TERM ADJUSTMENT
Filing Date: January 7, 2004	:	
Attorney Docket No. 11656-0004006	:	

This is a decision on the "Response to Decision on Petition" filed August 22, 2011, which requests reconsideration of a decision mailed June 20, 2011, and requests the patent term adjustment determination under 35 U.S.C. § 154(b) indicated on the patent be increased from 216 days to 351 days.

Patentee requests the decision on the instant petition be deferred or delayed until a decision has been rendered on a complaint filed in *Abbott Biotherapeutics Corp. v. Kappos*. The request for reconsideration of the June 20, 2011 decision is granted to the extent the June 20, 2011 decision has been reconsidered; however, the request for reconsideration is **DENIED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of 216 days. This decision is a final agency action within the meaning of 5 U.S.C. § 704 and for purposes of seeking judicial review.

BACKGROUND

On March 22, 2011, the application matured into U.S. Patent No. 7,912,855, with a revised patent term adjustment of 216 days.

A petition under 37 C.F.R. § 1.705(d) asserting the correct patent term adjustment is 351 days was filed May 23, 2011.

A decision dismissing the May 23, 2011 petition was mailed June 20, 2011.

Patentee timely submitted the instant request for reconsideration on August 22, 2011. The request states,

> The Office has excluded from B Delay the number of days beginning on October 18, 2007 (the day on which a Request for Continued Examination was first filed) and ending

on March 22, 2011 (the date the patent was issued). However, this entire time period should not be excluded from B Delay because it does not correspond exactly to continued examination. The Examiner's mailing of a Notice of Allowance Action on November 8, 2010, closed examination of the application on that date. Section 154(b)(1)(B)(i) of Title 35 ... does not provide for exclusion from B Delay of time from the mailing of the Notice of Allowance until issuance (a period during which continued examination did not occur).

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:

> 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:

> 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 C.F.R. § 1.702(b)(1) as 283 days based on the application having been filed under 35 U.S.C. § 111(a) on January 7, 2004, and the patent not having issued as of the day after the three year date, January 8, 2007-, and a request for continued examination under 35 U.S.C. § 132(b) having been filed on October 18, 2007. In other words, the 135-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 an 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 C.F.R.

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[1] Pursuant to 35 U.S.C. § 132(b), 37 C.F.R. § 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.

§ 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 C.F.R. § 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 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").

35 U.S.C. § 154(b)(1)(B) states the provisions of the section are "Subject to the limitations of paragraph (2)." "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.

35 U.S.C. § 154(b)(1)(B) includes the following language: "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." The preceding quoted language means 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."

35 U.S.C. § 154(b)(1)(B) includes the following language: "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 language quoted directly above means 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)).

Clauses in the statute are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in *Wyeth v. Dudas*, 580 F.Supp. 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)-(ii), including any time consumed by the filing of a request for continued examination.

35 U.S.C. § 154(b)(1)(B) includes the following language: "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 preceding quoted language means the consequence of a failure to issue the patent within the 3-year period 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

[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.

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 C.F.R. § 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 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 C.F.R. § 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 C.F.R. § 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 C.F.R. §§ 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 C.F.R. § 1.97(d). In addition, 37 C.F.R. § 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 C.F.R. § 1.114 even after the issuance of a notice of allowance under 35 U.S.C. § 151. *See* 37 C.F.R. § 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 an 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 C.F.R. § 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 C.F.R. § 1.53(b).

In this case, a request for continued examination was filed October 18, 2007, and the patent issued by virtue of that request on March 22, 2011. Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), the period beginning October 18, 2007, and ending March 22, 2011, was properly not included when calculating Office delay.

CONCLUSION

In view of the prior discussion, although the prior decision rendered June 20, 2011, has been reconsidered, the request for additional patent term is DENIED. The patent term adjustment remains 216 days as indicated on the patent.

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

Anthony Knight
Director
Office of Petitions

[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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In re Application of :
Yutaka Ito et al :
Application No. 10/752,863 :
Filed: January 7, 2004 :
Attorney Docket No. 082418-000300US :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 19, 2010, to revive the above-identified application.

The petition is **DISMISSED.**

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

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 4, 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 (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

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

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

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

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/752,863	Applicant(s) ITO ET AL.	
	Examiner Jasson H. Yoo	Art Unit 3718	

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

THE REPLY FILED 19 October 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: *1,4,5,7 and 11*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Continuation of 13. Other: Claim 1 has been amended to incorporate the claim limitation of, "a game apparatus having a central processing unit that executes a program in order to function as sections", the pedaling pressure designated as the obtained time change information", "when magnitude of the calculated acceleration exceeds a predetermined threshold value", and "said control section designates a sym of the calculated force and the obtained inertial force as the repulsive force". Furthermore, claims 4 is amended to add the limitation of, "using three-dimensional graphics" and claim 5 is amended to add the limitation of "moves the position of the point of view in the virtual world up and down". These newly added limitations require a further search and/or consideration.

Regarding claims 1,4,5,7 and 11 rejected over Throner, Applicant argues that the inertial term is not taught by the reference. As indicated in the Final office action, The Thorner's reference fails to teach to explicitly state that the inertial force information is associated with the calculated acceleration only when the magnitude of the acceleration exceeds a predetermined threshold value and the sum of the calculated force and the inertial force is the repulsive force of the pedal. However, Thornier implicitly teaches these limitations or would have been obvious to one of ordinary skilled in the art. Thorner explicitly teaches that pedal can provide feed back to the user that corresponds to the events occurring within the game simulation (abstract, cols. 2:17-35, 6:67-7:4, 17:12-44). These events are predetermined and defined according to the game program (threshold values, col. 17:22-26, 17:33-41). Thorner also teaches that the brake pedal can simulate braking resistance (cols. 35:49-50, 42:30-31). In order to provide feedback that simulates braking resistance, it is implied that the inertial associated with the acceleration is calculated since braking resistance will only occur when the car is braking from acceleration. Otherwise, it would have been obvious to one of ordinary skill in the art at the time the invention was made to calculate the inertial associated with the acceleration of the vehicle's acceleration in order to provide the appropriate braking resistance that with corresponds to the events occurring within the game simulation. Furthermore, the claim recites, said control section designates a sum of the calculated force and the inertial force as the repulsive force of the pedal when the inertial force is obtained, and designates the calculated force as the repulsive force of the pedal when the inertial force is not obtained. In other words, a repulsive force or braking resistance is provided according to how fast the object is moving. Thorner discloses a braking resistance is provided (35:42-53, 42:30-35), according to how fast the object is moving (according to the threshold values, such as feedback identification number and parameters to define intensity duration, step value, col. 17:22-26, 17:33-41).
Applicant argues that Thorner's braking resistance is a force, and force is calculated as F=mxa. Applicant adds that the Throne's braking resistance would be computed from the car's acceleration times the mass of the car. However, Applicant fails to disclose where Thorner's reference discloses that the braking resistance is the mass of the car times the acceleration of the car. As indicated by the claim the repulsive force of the pedal is the sum of the inertial force and the calculated force. Thus the force of the car is different from the repulsive force applied to the pedal.

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JAN 18 2011

OFFICE OF PETITIONS

In re Application of :
Yutaka Ito et al :
Application No. 10/752,863 : ON PETITION
Filed: January 7, 2004 :
Attorney Docket No. 060233.00075 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 13, 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 fee of $810 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) 272-3210.

This application is being referred to Technology Center AU 3718 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment previously filed October 19, 2010 in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

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MAILED
JUN 28 2011
OFFICE OF PETITIONS

In re Patent No. 7,930,315	:
MARGOLUS, NORMAN H.	: DECISION ON REQUEST FOR
Issue Date: April 19, 2011	: RECONSIDERATION OF
Application No. 10/752,958	: PATENT TERM ADJUSTMENT
Filed: January 7, 2004	:
Attorney Docket No. 11656-	:
004011	:
Title: HISTORY PRESERVATION IN	:
A COMPUTER STORAGE SYSTEM	:

This is a decision on the petition filed on June 20, 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 three hundred fifty-four (354) days.

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

BACKGROUND

On April 19, 2011, the above-identified application matured into U.S. Patent No. 7,930,315, with a revised patent term adjustment of 236 days. On June 20, 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 354. Patentee maintains that the Office incorrectly calculated Office delay

pursuant to 37 CFR 1.702(b). Patentee contends 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, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 23, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 118 day period from December 23, 2010 (the mailing date of the Notice of Allowance) until April 19, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 118 days and be increased from 296 to 414 days. Patentee concludes that the correct patent term adjustment is 354 days (the sum of 510 days of "A delay" and 414 days of "B delay" minus 17 days of overlap between "A delay" and "B delay" - 553 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

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 296 days based on the application having been filed under 35 U.S.C. 111(a) on January 7, 2004, and the patent not having issued as of the day after the three year date, January 8, 2007, and a request for continued examination under 132(b) having been filed on September 17, 2010. In other words, the 118-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]. 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 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

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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.

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.

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 (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 section 132(b) does not end until issuance of

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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.

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

[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.

date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of thepatent 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 September 17, 2010, and the patent issued by virtue of that request on April 19, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 17, 2010, and ending on April 19, 2011, is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 236 days indicated on the patent is correct.

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

Christina Tartera Donnell

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In re Patent No. 7,930,315	:	
NORMAN H. MARGOLUS	:	DECISION FOR REQUEST
Issue Date: April 19, 2011	:	FOR RECONSIDERATION
Application No. 10/752,958	:	OF PATENT TERM
Filed: January 7, 2004	:	ADJUSTMENT
Attorney Docket No. 11656-004011	:	

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed August 29, 2011. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from two hundred thirty-six (236) days to three hundred fifty-four (354) days.

The request for reconsideration is granted to the extent that the determination has been reconsidered; however, the request for reconsideration of patent term adjustment is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. 154(b) of 236 days. This decision may be viewed as a final agency action within the meaning of 5 U.S.C. 704 and for purposes of seeking judicial review. See MPEP 1002.02.

BACKGROUND

On April 19, 2011, the above-identified application matured into U.S. Patent No. 7,904,941, with a revised patent term adjustment of 236 days. This revised determination included an entry of a

period of adjustment of 296 days pursuant to 37 CFR 1.702(b) for the Office taking in excess of three years to issue the patent.

On June 20, 2011, patentees filed a petition under 37 CFR 1.705(d) requesting that the patent term adjustment be reflected as 354 days. By decision mailed June 28, 2011, the request for reconsideration was dismissed and the patent term adjustment remained 236 days.

On August 29, 2011, patentees filed the present request for reconsideration. Patentees again dispute the calculation of the "B delay" period of the patent term adjustment. Specifically, patentees' state:

> Patentees submit that B Delay accumulated for a total of 1,563 days, beginning on January 8, 2007 (the day after the date that is three years after the date on which the application was filed), and ending April 19, 2011 (the date the patent was issued). The Office has excluded from B Delay the number of days corresponding to the period beginning on October 31, 2007 (the date on which a Request for Continued Examination was filed) and ending on April 19, 2011 (the date the patent was issued). However, this entire period should not be excluded from B Delay because it does not correspond exactly to continued examination. The Examiner's mailing of a Notice of Allowance Action mailed on December 23, 2010, closed examination of the application on that date. Section 154(b)(1)(B)(i) of Title 35 excludes from B Delay 'time consumed by continued examination of the application.' The statute does not provide for exclusion from B Delay of time from the mailing of a Notice of Allowance until issuance (a period during which continued examination did not occur).

"Response to Decision on Request for Reconsideration of Patent Term Adjustment" filed August 29, 2011, pp. 2-3.

STATUTE AND REGULATION

35 U.S.C. 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999[1] (AIPA) provides that:

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[1] Public Law 106-113, 113 Stat. 1501, 1501A-557 through 1501A-560 (1999).

ADJUSTMENT OF PATENT TERM. –

(1) PATENT TERM GUARANTEES. –

(A) GUARANTEE OF PROMPT PATENT AND TRADEMARK OFFICE RESPONSES. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to –

(i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after –

(I) the date on which an application was filed under section 111(a) of this title; or

(II) the date on which an international application fulfilled the requirements of section 371 of this title;

(ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;

(iii) act on an application within 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 or a decision by a Federal court under section 141, 145, or 146 in a case in which allowable claims remain in the application; or

(iv) issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.

(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review

by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

(C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to –

(i) a proceeding under section 135(a);

(ii) the imposition of an order under section 181; or

(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.

(2) LIMITATIONS. –

(A) IN GENERAL. – To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

The implementing regulation, 37 CFR 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

(a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled

the requirements of 35 U.S.C. 371 in an international application;

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

(3) Act on an application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application; or

(4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

(b) Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including[2]:

In pertinent part, 37 CFR 1.703 provides for calculation of the periods, as follows:

Period of adjustment of patent term due to examination delay.

(a) The period of adjustment under § 1.702(a) is the sum of the following periods:

(1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under

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[2] (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.

35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(4) The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and

(6) The number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the

national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods[3]:

37 CFR 1.703(f) provides that:

The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this

[3] (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

(2)(i) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and (ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3)(i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181; (ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed; (iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and (iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under 35 U.S.C. 151; and,

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

OPINION

Patentees' argument has again been considered, but is not persuasive. 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)[4]. 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.

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[4] 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.

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)[5]. 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.

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[5] 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.

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[6] permits 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 September 17, 2010, and the patent issued by virtue of that request on April 19, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 17, 2010, and ending on April 19, 2011, is not included in calculating Office delay. In view thereof, it is concluded that the patent term adjustment of 236 days is correct.

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[6] 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.

CONCLUSION

The request for reconsideration of the revised patent term adjustment is denied.

The Office acknowledges the previous submission of the $200.00 fee set forth in 37 CFR 1.18(e). As this request pertains only to the over 3-year delay issue previously raised in the application for patent term adjustment, no additional fees are required.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, (571) 272-3211.

Anthony Knight
Director
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 8,005,696	: DECISION ON
Margolus, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/752,980	: of PATENT TERM ADJUSTMENT
Issue Date: November 8, 2011	:
Filed: January 7, 2004	:
Attorney Docket No. 11656=0004003	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed January 9, 2012, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one hundred forty-five (145) days to two hundred thirty-two (232) days.

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

On November 8, 2011, the instant application matured into U.S. Patent No. 8,055,628 with a patent term adjustment of one hundred forty-five (145) days. The Office determined a patent term adjustment of 145 days based upon 493 days of "A" delay and 287 days of "B" delay, reduced by 635 days of Applicant delay.

Petitioner argues that even though he filed an RCE on October 22, 2007 (and again on April 8, 2009 and August 23, 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 June 24, 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 287 days based on the application having been filed under 35 U.S.C. 371(f) on January 7, 2004, and a request for continued

examination under 132(b) having been filed on October 22, 2007. In other words, the 138 day period beginning on the date of mailing of the Notice of Allowance on June 24, 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).

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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.

Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

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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.

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 issuance 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 October 22, 2007, and the patent issued by virtue of that request on November 8, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on October 22, 2007 and ending on November 8, 2011 is not included in calculating Office delay.

In addition, petitioner also points the Office's attention to the fact that he filed an IDS on December 17, 2007, subsequent to a reply having been filed on October 22, 2007. As such, 56 days of Applicant delay should have been assessed pursuant to 37 CFR 1.704(c)(8). The Office thanks petitioner for his good faith and candor.

In addition, petitioner also states that he was assessed Applicant delay of 90 days, but that he should have instead been assessed Applicant delay of 87 days because the due date fell on a weekend. Petitioner's argument has been considered, but is not persuasive. The three month reply as intended by 35 USC 154(b)(2)(C)(ii) refers to the date of reply by applicants not the date of mailing of the Office action by the USPTO. See also 35 USC 21(b). 37 CFR 1.704(b) addresses what ends the clock, not what starts the clock.

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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.

However, for the reason set forth above, petitioner is correct in asserting that he should not have been assessed 2 days of Applicant delay for filing the issue fee on September 26, 2011 in response to a June 24, 2011 Notice of Allowance. Zero days should have been assessed for this filing.

CONCLUSION

In view thereof, the correct number of days of patent term adjustment is **ninety-one (91) days** (493 days of "A" delay plus 287 days of "B" delay, reduced by 689 days of Applicant 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 **ninety-one (91) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 8,005,696 B2

DATED : **November 8, 2011**

INVENTOR(S) : Margolus 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 145 days.

Delete the phrase "by 145 days" and insert – by 91 days--

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Suite 100
San Francisco CA 94158

In re Application of	:	
KOZLOWSKI et al.	:	
Application No. 10/753,047	:	DECISION ON APPLICATION
Filed: 01/06/2004	:	FOR
Attorney Docket No. SHE0067.00	:	PATENT TERM ADJUSTMENT

This is a decision on the REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT INDICATED IN THE NOTICE OF ALLOWANCE filed October 20, 2010. Applicants request correction of the patent term adjustment from 334 days to 1544 days partly on the basis of the Office taking in excess of three years to issue the patent.

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

The Office has updated the PALM and PAIR screens to reflect that the patent term adjustment determination at the time of the mailing of the notice of allowance is **eight hundred fifty-six (856) days**. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, 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 three 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].

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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

On July 22, 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 was 334 days.

Applicants assert that the patent term should be adjusted by 490 days (not 269 days) for the Office's failure to respond to a reply under 35 U.S.C. 132, filed March 23, 2006, not later than four months after the date on which the reply was filed. See 37 CFR 1.702(a)(2).

Applicants' assertion is well taken. Applicants showed that they filed a complete reply to the Restriction Requirement on March 23, 2006. However, the Office did not respond with the mailing of the nonfinal Office action until November 26, 2007, four months and 491 days later. Thus, the Office should be assessed a delay of 491 days. See 37 CFR 1.703(a)(2). Accordingly, the period of adjustment of 269 days will be removed and a period of adjustment of 491 days will be entered.

Next, applicants contend that they are entitled to a period of adjustment of 10 days for the Office's failure to respond to a reply under 35 U.S.C. 132 not later than four months after the date on which the reply was filed. Specifically, applicants assert:

> Applicant's timely response to an Office Action was filed on September 11, 2008. The PTO substantively responded to Applicants' September 11, 2008, submission by mailing an Office Action on January 21, 2009. The mailing date of the January 21, 2009, Office Action occurred **10** days following the four months from Applicants' September 11, 2008, submission (the difference between January 11, 2009 (four months from Applicant's September 11, 2008, submission) and the January 21, 2009, mailing date of the Office Action).
>
> The Patent Office does not identify any delay on behalf of the Patent Office. Although Applicants' acknowledge that a Notice Requiring Excess Claims Fees

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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.

> was mailed on October 10, 2010, Applicants point out now (as was pointed out in Applicants' response dated November 6, 2008) that authorization to charge any fees believed to be due in the September 11, 2008, submission could be charged to Applicants deposit account. As such, Applicants' submission was complete and the **10** days of delay was the result of the Patent Office and not by Applicants.
>
> As a consequence, in view of the above, Applicants respectfully request this delay be accorded with **10** days of Patent Office Delay.

Petition, p. 3.

The Office has considered applicants' argument, but does not find it persuasive. On October 10, 2008, the examiner responded to applicants' reply filed September 11, 2008. The Notice of Additional Fee Due, mailed October 10, 2008, met the minimum requirements of an action under 35 U.S.C. 132 and was mailed within four months of the September 11, 2008 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.

Lastly, applicants dispute the period of reduction of 300 days associated with the filing of an Information Disclosure Statement (IDS) on August 29, 2007. Applicants assert that they did not file an IDS or any other paper in the USPTO on August 29, 2007. Applicants aver that the entry in PAIR of the IDS was an error on the part of the USPTO.

A review of the application record supports a conclusion that no IDS or any other paper was filed in the USPTO on August 29, 2007. Therefore, the reduction of 300 days of patent term adjustment is not warranted and is being removed.

In view thereof, the patent term adjustment determination at the time of the mailing of the notice of allowance is **eight hundred fifty-six (856) days**.

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

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

Enclosure: Copy of updated PAIR screen

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/753,047

Filing or 371(c) Date:	01-06-2004	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	636
A Delays:	636	PTO Manual Adjustments:	522
B Delays:	0	Applicant Delays:	302
C Delays:	0	Total PTA Adjustments:	856

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
88	02-16-2011	Adjustment of PTA Calculation by PTO	491		0
87	02-16-2011	Adjustment of PTA Calculation by PTO		269	0
86	02-16-2011	Adjustment of PTA Calculation by PTO	300		0
76	07-22-2010	Mail Notice of Allowance			0
75	07-15-2010	Issue Revision Completed			0
74	07-15-2010	Document Verification			0
73	07-15-2010	Notice of Allowance Data Verification Completed			0
72	07-15-2010	Case Docketed to Examiner in GAU			0
71	07-15-2010	Examiner's Amendment Communication			0
70	07-13-2010	Notice of Allowability			0
67	05-07-2010	Date Forwarded to Examiner			0
66	04-09-2010	Response after Non-Final Action		2	64
65	04-09-2010	Request for Extension of Time - Granted			0
64	01-07-2010	Mail Non-Final Rejection			0
63	01-04-2010	Non-Final Rejection			0
62	10-15-2009	Information Disclosure Statement considered			0
61	10-15-2009	Reference capture on IDS			0
60	10-15-2009	Information Disclosure Statement (IDS) Filed			0

59	10-20-2009	Date Forwarded to Examiner		0
58	10-15-2009	Amendment Submitted/Entered with Filing of CPA/RCE		0
57	10-20-2009	Date Forwarded to Examiner		0
56	10-15-2009	Request for Continued Examination (RCE)		0
55	10-20-2009	Disposal for a RCE / CPA / R129		0
54	10-15-2009	Information Disclosure Statement (IDS) Filed		0
53	10-15-2009	Workflow - Request for RCE - Begin		0
52	08-20-2009	Mail Final Rejection (PTOL - 326)		0
51	08-17-2009	Final Rejection		0
49	04-20-2009	Rule 47 / 48 Correction of Inventorship Papers Filed		0
48	06-05-2009	Date Forwarded to Examiner		0
47	04-20-2009	Response after Non-Final Action		0
46	01-21-2009	Mail Non-Final Rejection		0
45	01-21-2009	Non-Final Rejection		0
44	11-07-2008	Date Forwarded to Examiner		0
43	11-06-2008	Fee Payment Recorded (fees filed separately e.g. not with original papers, etc).		0
41	10-10-2008	Mail Notice of Required Fees Due		0
40	10-10-2008	Notice of Additional Fee Due		0
39	10-10-2008	Date Forwarded to Examiner		0
38	09-11-2008	Response after Non-Final Action		0
37	06-12-2008	Mail Non-Final Rejection		0
36	06-09-2008	Non-Final Rejection		0
35	04-01-2008	Date Forwarded to Examiner		0
34	02-26-2008	Response after Non-Final Action		0
33	11-26-2007	Mail Non-Final Rejection	269	29

32	11-13-2007	Non-Final Rejection			0
31	10-04-2007	Case Docketed to Examiner in GAU			0
30	09-04-2007	Date Forwarded to Examiner			0
29	11-02-2006	Response to Election / Restriction Filed			0
28	08-27-2007	Mail Notice of Rescinded Abandonment			0
27	08-31-2007	Notice of Rescinded Abandonment in TCs			0
26	08-29-2007	Electronic Information Disclosure Statement		300	29
25	08-27-2007	Mail-Petition to Revive Application - Granted			0
24	11-02-2006	Petition Entered			0
23	10-02-2006	Mail Abandonment for Failure to Respond to Office Action			0
22	09-29-2006	Aband. for Failure to Respond to O. A.			0
21	04-18-2006	Information Disclosure Statement considered			0
20.7	04-18-2006	Information Disclosure Statement (IDS) Filed			0
20	04-18-2006	Information Disclosure Statement (IDS) Filed			0
19	03-08-2006	Mail Restriction Requirement	367		-1
18	03-06-2006	Requirement for Restriction / Election			0
17	10-01-2004	Information Disclosure Statement considered			0
16	02-28-2006	Case Docketed to Examiner in GAU			0
15	10-01-2004	Reference capture on IDS			0
14.7	10-01-2004	Information Disclosure Statement (IDS) Filed			0
14	10-01-2004	Information Disclosure Statement (IDS) Filed			0
13	10-20-2004	IFW TSS Processing by Tech Center Complete			0
12	10-20-2004	Case Docketed to Examiner in GAU			0
11	10-14-2004	Application Return from OIPE			0
10	10-14-	Application Return TO OIPE			0

	2004		
9	10-14-2004	Application Dispatched from OIPE	0
8	10-14-2004	Application Is Now Complete	0
7	09-28-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
6	09-08-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	08-30-2004	Cleared by OIPE CSR	0
3	08-30-2004	CASE CLASSIFIED BY OIPE	0
2	08-27-2004	IFW Scan & PACR Auto Security Review	0
1	01-06-2004	Initial Exam Team nn	0

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OFFICE OF PETITIONS

In re Application of	:	
Reifsnyder et al.	:	ON REQUEST FOR
Application No. 10/753078	:	RECONSIDERATION OF
Filing or 371(c) Date: 01/08/2004	:	PATENT TERM ADJUSTMENT
Attorney Docket Number:	:	
12441.00050/16331.004	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed June 14, 2010. Applicants petition for reconsideration of the patent term adjustment calculation to 360 days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction based upon (1) an assertion that the Office erred in calculating a delay of 94 days, and (2) on the basis that the Office will take in excess of three years to issue this patent.

The 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 94 days is **DISMISSED**.

The 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 March 12, 2010, this Office mailed a Notice of Allowance and Issue Fee Due, including a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days.

On June 14, 2010, Applicants timely submitted the instant application for patent term adjustment[1]. Applicants request that the Determination of Patent Term Adjustment be corrected from 0 days, as indicated on the Determination of PTA mailed March 12, 2010, to an adjustment of 360 days. Applicants assert that the Office erred in calculation a reduction of 94 days pursuant to 37 CFR 1.704(c)(8), in connection with the filing of a Supplemental Information Disclosure

[1] PALM records show that the Issue Fee payment was received in the Office on June 14, 2010.

Statement ("IDS") on February 16, 2006, after filing a reply to a Election/Restriction Requirement on November 14, 2005.

Applicants also request an adjustment of 349 days on the basis that the Office will take in excess of three years to issue this patent.

As to the assertion that the Office erred in calculating a delay of 94 days, Office records reveal that Applicants filed the response to the Election/Restriction Requirement on November 14, 2005. Thereafter, Applicants filed a Supplemental IDS on February 16, 2006. Pursuant to 37 CFR 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. It is undisputed that after filing a response on November 14, 2005, applicants filed an IDS on February 16, 2006. The record does not support a conclusion that the IDS was expressly requested by the examiner. Further, a review of the IDS filed December 4, 2008, reveals that it did not include the proper § 1.704(d) statement[2]. Accordingly, it is concluded that the period of reduction of 94 days is correct and will not be changed.

A review of Office records also reveals that the Office errantly neglected to assess a reduction in connection with the reply to the Notice to File Missing parts of Nonprovisional Application ("Notice"), mailed March 23, 2004. The Notice required, *inter alia*, a properly signed oath or declaration. Applicants filed a partial response to the Notice entitled SUBMISSION OF SUBSTITUTE SEQUENCE LISTING, on April 14, 2004, which did not include a properly signed oath or declaration. Applicants thereafter filed a response to the Notice, including an oath/declaration, on May 24, 2004. Pursuant to 37 CFR 1.704(c)(7), a reduction of forty (40) days, beginning on the day after the date the reply having an omission was filed, April 15, 2004, and ending on the date that the reply or other paper correcting the omission was filed, May 24, 2004, is appropriate.

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.

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[2] 37 CFR 1.704(d) provides that a paper containing only an information disclosure statement in compliance with 37 CFR 1.97 and 1.98 will not be considered (result in a reduction) under 37 CFR 1.704(c)(6), 1.704(c)(8), 1.704(c)(9), or 1.704(c)(10) if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

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

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[3].

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 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. 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).

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[3] 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

CC: Banner & Witcoff, Ltd.
1100 13th Street, N.W.
Suite 1200
Washington, DC 20005

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P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 8,095,516	:	DECISION ON REQUEST
Margolus, et al.	:	FOR
Issue Date: January 10, 2012	:	RECONSIDERATION OF
Application No. 10/753,125	:	PATENT TERM ADJUSTMENT
Filed: January 7, 2004	:	and
Atty Docket No. 11656-004013	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on March 12, 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 hundred and sixty-four (164) 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 **thirty-six (36)days** is **GRANTED to the extent indicated herein**.

The instant petition was filed March 12, 2012. Patentees state, in pertinent part:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, Requests for Continued Examination were filed on October 31, 2007, May 18, 2009, and September 1, 2010. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on September 7, 2011, thereby closing examination of the application on that date. Thus, no continued examination took place during 126 day period from September 7, 2011 (the mailing date of the Notice of Allowance) until

> January 10, 2012 (the date the patent was issued). Accordingly, 126 days of "B Delay" should have been included in addition to the 262 days accorded by the Director, for a total "B Delay" of 338 days.

Excerpt taken from "Application for Patent Term Adjustment under 37 CFR 1.705(d)", filed March 12, 2012, pg. 4.

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.

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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.

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.

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(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)-(ii), including any time consumed by the filing of a request for continued examination.

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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.

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]

[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.

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 October 31, 2007, and the patent issued by virtue of that request on January 10, 2012. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on October 31, 2007, and ending on January 10, 2012, is not included in calculating Office delay.

Patentees' assertion that the a reduction to the patent term adjustment of 62 days is warranted for the filing of an Information Disclosure Statement on November 2, 2010, is well-taken. The record reflects that on November 2, 2010, patentees submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) after filing a reply to a

final Office action on September 1, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed November 2, 2010, reveals that patentees did not include a statement under 37 CFR 1.704(d).[4] Thus, patentees failed to engage in reasonable efforts to conclude prosecution of the application. Accordingly, the period of adjustment should have been reduced by 62 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, September 2, 2010, and ending on the date that the IDS was filed, November 2, 2010. **A period of reduction of 62 days will be entered accordingly.**

Patentees further assert that the periods of reduction of 92-days for replies filed August 4, 2008, and June 13, 2011, should be both 91-days because the Office failed to take into account that the three month period for response to the Office actions did not end until the following Monday (or next business day) because the three month periods for reply to the Office actions ended on weekends. Thus, the calculation of the reduction to the patent term adjustment under 37 CFR 1.704(b) should not begin until Monday, May 5, 2008, and Monday March 14, 2011. Petitioner's argument is unavailing. The three month reply as intended by 35 USC 154(b)(2)(C)(ii) refers to the date of reply by applicants not the date of mailing of the Office action by the Office. See also 35 USC 21(b). The periods of reduction to the patent term adjustment of 92 days are unaffected.

Accordingly, the revised patent term adjustment is 36 days (476 days "A" delay + 262 days "B" delay - 0 days of overlap - 702 days of applicant delay.)

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[4] Pursuant to 37 CFR § 1.704(d):

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

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

The application is being forwarded to the Certificates of 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 **Thirty-six (36)** days.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,095,516 B2

DATED : Jan. 10, 2012

INVENTOR(S) : Margolus, 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 (98) days

Delete the phrase "by 98 days" and insert – by 36 days--

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OFFICE OF PETITIONS

In re Application of Gwinn :
Application No. 10/753,165 : Decision on Petition
Filing Date: January 6, 2004 :
Attorney Docket No. 0014/1254-US0 :

This is a decision on the petition under 37 CFR 1.137(b) filed June 2, 2011, which requests revival of the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter titled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed September 15, 2010, 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 December 16, 2010. The Office mailed a Notice of Abandonment on April 14, 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,
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995, or if the application is a design application.

The instant petition fails to satisfy requirement (1) set forth above.

A proper reply to a final rejection consists only of:

1. An amendment which *prima facie* places the case in condition for allowance,
2. A Notice of Appeal and the required fee,
3. A request for continued examination ("RCE"), or
4. A continuing application.

The petition includes a proposed amendment. The proposed amendment was sent to the examiner to determine whether it placed the application in condition for allowance. The examiner determined the amendment raises new issues that would require further consideration and/or search. For example, the examiner determined,

> With respect to claim 1, the newly added limitation of "a front end COMMON EMITTER OR SOURCE amplifier" and a "back end COMMON BASE OR GATE buffer" raises a new issue that would require further search and/or consideration.

Since the amendment raises at least one new issue that would require further search and/or consideration, the amendment does not *prima facie* place the application in condition for allowance and the amendment is *not* a proper reply to the final Office action. Therefore, the petition must be dismissed.

If petitioner wishes to revive the instant application, a request for reconsideration and a proper reply to the final Office action should be filed.

A grantable petition under 37 CFR 1.137(b) must be accompanied by 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 instant petition includes such a statement, the statement should also appear in any request for reconsideration. In other words, any request for reconsideration should include the following statement, or a similar statement: "The entire delay in filing the required reply from the due date for the reply until the filing the instant petition pursuant to 37 CFR 1.137(b) was unintentional."

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 23 2011
OFFICE OF PETITIONS

Leason Ellis LLP
81 Main Street
Suite 503
White Plains, NY 10601

In re Application of Gwinn :
Application No. 10/753,165 : Decision on Petition
Filing Date: January 6, 2004 :
Attorney Docket No. 0014/1254-US0 :

This is a decision on the petition under 37 CFR 1.137(b) filed August 5, 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 final Office action mailed September 15, 2010, 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 December 16, 2010. The Office mailed a Notice of Abandonment on April 14, 2011.

The instant petition requests revival of the application.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee, 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 $810, 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 2819 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

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/753,169	BERGERON ET AL.	
	Examiner	Art Unit	
	FRANK LU	1634	

ISSUE CLASSIFICATION

ORIGINAL						CROSS REFERENCE(S)							
CLASS				SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)							
435				91.2	435	6	91.1						
INTERNATIONAL CLASSIFICATION					536	23.1	24.3	24.33	25.3				
C	1	2	P	19/34									
C	1	2	Q	1/68									
C	0	7	H	21/02									
C	0	7	H	21/04									
C	0	7	H	21/00									

(Assistant Examiner) (Date)	/Frank W Lu/ 6/3/2011	Total Claims Allowed: 17
(Legal Instruments Examiner) (Date)	(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
	2		32	12	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	8	68		98		128		158		188
	9		39	9	69		99		129		159		189
	10		40	13	70		100		130		160		190
	11		41	14	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	15	76		106		136		166		196
	17	1	47	10	77		107		137		167		197
	18	2	48	11	78		108		138		168		198
	19	3	49	16	79		109		139		169		199
	20		50	17	80		110		140		170		200
	21		51		81		111		141		171		201
	22		52		82		112		142		172		202
	23	4	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	5	58		88		118		148		178		208
	29	6	59		89		119		149		179		209
	30	7	60		90		120		150		180		210

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JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of :
Jenny E. Freeman et al. :
Application No. 10/753,871 :
Filed: January 09, 2004 :
Attorney Docket No. **8118.003.USDV** :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 31, 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 May 12, 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)(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 August 13, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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. Accordingly, the reply to the final Office Action of May 12, 2008 is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is not a correct reading of the statement appearing in the petition.

The Power of Attorney submitted with the petition on August 31, 2010 is not accepted. The Power of Attorney was signed by Rick Lifsitz, acting on behalf of the assignee. However, the statement under 37 CFR 3.73(b) included therewith is not acceptable. The instant application is a continuation-in-part of the parent application 09/389,342 ('342 application). The assignment recorded against the '342 application can not be applied to the instant application. See MPEP§ 306. Therefore, the Power of Attorney will not be accepted at this time.

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

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

This application is being referred to Technology Center AU 3737 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.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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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)
7076915	2006-07-18	10/753,963	2004-01-08	

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.

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Rodney Spies/	Date (YYYY-MM-DD)	2010-10-06
Name	Rodney Spies		
Enter Reel and Frame Number		Remove	
Reel Number	017028	Frame Number	0899
Click ADD for additional Reel Number and Frame Number		Add	

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. 7076915
Issue Date: July 18,2006
Application No. 10753963
Filed: January 8,2004
Attorney Docket No. 043506.001

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

This is a decision on the electronic petition, filed October 14,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 14,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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MARKELL SEITZMAN
3400 WINTERBERRY
ORCHARD LAKE MI 48324

MAILED

JAN 20 2011

OFFICE OF PETITIONS

In re Patent No. 7,070,167	:	
Issue Date: July 04, 2006	:	
Application No. 10/754,163	:	DECISION ON PETITION
Filed: January 10, 2004	:	
Attorney Docket No. HERK LPL -10	:	

This is a decision on the petition under 37 CFR 1.378(c), filed October 20, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
(3) An assignee as provided for under §3.71(b) of this chapter; or
(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Todd J. Bacon) was ever given a power of attorney to act on behalf of inventor Richard A. Robb or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

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

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

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

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

Telephone inquiries should be directed to the undersigned at (571272-4231.

Michelle R. Eason
Michelle R. Eason
Paralegal Specialist
Office of Petitions

Cc: **TODD BACON**
HERKULES EQUIPMENT COMPANY
2760 RIDGEWAY COURT
WALLED LAKE, MICHIGAN 48390

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3400 WINTERBERRY
ORCHARD LAKE MI 48324

MAILED
APR 26 2011
OFFICE OF PETITIONS

In re Patent No. 7,070,167	:	
Issue Date: July 04, 2006	:	
Application No. 10/754,163	:	DECISION ON PETITION
Filed: January 10, 2004	:	
Attorney Docket No. HERK LPL -10	:	

This is a decision on the renewed petition under 37 CFR 1.378(c), filed February 15, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 04, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

The patent file is being forwarded to Files Repository.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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60 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84111

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SEP 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,426,450	:	
Issued: September 16, 2008	:	
Application No. 10/754,217	:	ON PETITION
Filed: January 9, 2004	:	
Attorney Docket No. 15455.4.1	:	

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

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

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

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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HENRY ESTAVEZ
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
SUITE 1401
255 SO. ORANGE AVE.
ORLANDO FL 32802-3791

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APR 01 2011
OFFICE OF PETITIONS

Patent No. 7,151,261	:	
Application No. 10/754,238	:	
Filed: January 9, 2004	:	ON PETITION
Issued: December 19, 2006	:	
Attorney Docket No. 59949	:	

This is a decision on the petition under 37 CFR 1.378(c), filed February 9, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued December 19, 2006. The last day of the grace period for paying the 3.5-year maintenance fee was December 19, 2010. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record. Petitioner should note that a change of correspondence address would not affect the fee address. Therefore, if petitioner desires to receive future correspondence, which **may** be mailed regarding maintenance fees for the above-identified patent, the "fee address" and/or "customer number" forms should be submitted.

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

Liana Walsh
Petitions Examiner
Office of Petitions

cc: BRUCE CHAI
5525 BENCHMARK LANE
SANFORD, FL 32773

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent of Marolia et al. :
Patent No. 7,480,907 : DECISION ON PETITION
Issued: January 20, 2009 :
Application No. 10/754,313 :
Filed: January 9, 2004 :
Attorney Docket No. 14315US02 // 82236188

This is in response to the petition under 37 CFR 1.47(a), filed November 10, 2011.

The petition is **DISMISSED** as inappropriate.

The instant petition was filed to obtain rule 47 status for an unsigned assignment by joint inventors Teck Chia and John D. V. Dinh.

The above-identified application matured into Patent No. 7,480,907 on January 20, 2009. A review of the official record reveals that Rule 47 status was granted to the application on March 1, 2005 due to Inventors Chia and Dinh's constructive refusal to join in the filing of the application. Six of the eight joint inventors obtained status under Rule 47(a) to prosecute the application on behalf of themselves and the two non-signing joint inventors.

The provisions of 37 CFR 1.47 are not applicable to an application which has issued as a patent. The provisions of 37 CFR 1.47 are not applicable to matters concerning unsigned assignment documents.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Lorfing appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr.Lorfing desires to receive correspondence regarding this patent file, the appropriate power of attorney/change of address/ "Fee Address" Indication Form and Request for Customer Number documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Lorfing.

However, until otherwise instructed, all future correspondence regarding this patent file will be directed solely to the above-noted correspondence address of record.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: JASON P. LORFING
BROOKS, CAMERON & HUEBSCH, PLLC
1221 NICOLLET AVENUE, SUITE 500
MINNEAPOLIS MN 55403

UNITED STATES PATENT AND TRADEMARK OFFICE

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED
DEC 02 2010
OFFICE OF PETITIONS

In re Patent of Hatti et al.	:	DECISION ON REQUEST
Patent No. 7,769,198	:	FOR
Issued: August 3, 2010	:	RECONSIDERATION OF
Application No. 10/754,322	:	PATENT TERM ADJUSTMENT
Filed: January 9, 2004	:	
Docket No. 15296US01	:	

This is a decision on the petition under 37 CFR 1.705(d), filed on October 4, 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 one thousand three hundred seventeen (1317) days.

The petition is **DISMISSED.**

Patentees argue the Office incorrectly calculated the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") and the Office should not have entered a reduction in connection with the payment of the issue fee on Monday, September 21, 2010.

In calculating the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay"), patentees indicate the period of delay ended on March 11, 2008, the date the RCE was filed. However, per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The period of B Delay in this case is 426 days, which is the number of days beginning on January 10, 2007, the day after the date three years after the filing date, and ending on March 10, 2008, the day before the date the RCE was filed.

Patentees dispute the period of reduction of 2 days, pursuant to 37 CFR 1.704(b), for Applicant delay in filing the issue fee on September 21, 2010, a Monday.

While the September 21, 2010 payment of the issue fee was timely with respect to avoiding abandonment, it was not timely for purposes of determining patent term adjustment. Per 37 CFR 1.704(b), an applicant is responsible for replying to an Office action within three months of the date the Office action was mailed or given to him. The date of receipt in the Office is the salient date for purposes of determining patent term adjustment. In the future, patentees may wish to consider the use of the "Express Mail Post Office to Addressee " service of the United States Postal Service (37 CFR 1.10) or facsimile transmission (37 CFR 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. Alternatively, patentees may choose to mail correspondence with sufficient time to ensure that the correspondence is received in the Office (and stamped with a date of receipt) before the expiration of the three-month period. *See* MPEP 2731.

Patentees were properly charged with a 2 day period of delay, beginning on September 20, 2010, the day after three months after the Office action was mailed, and ending on September 21, 2010, the date the issue fee was filed.

In view of the above, the correct patent term adjustment remains 1314 days, which is the sum of 1093 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 426 of B Delay, reduced by 170 days of overlap (from January 10, 2007 to June 28, 2007), and reduced by 35 days for Applicant delay.

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) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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FISH & RICHARDSON P.C. (SD)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Application of
Gordon McNally, et al.
Application No. 10/754,349
Filed: January 9, 2004
Attorney Docket No. 13921-002001

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 15, 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 John C. Phillips on behalf of all attorneys of record who are associated with this application. All attorneys/agents associated with this application have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. 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: GORDON MCNALLY
ELECTRONIC GAME CARD, INC
NORFOLK HOUSE, 31 ST JAMES SQUARE
LONDON SW1Y-4JR
ENGLAND

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/754,349	01/09/2004	Gordon McNally	16921-002001

CONFIRMATION NO. 8316

POWER OF ATTORNEY NOTICE

20985
FISH & RICHARDSON P.C. (SD)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

OC000000044899140

Date Mailed: 12/10/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/15/2010.

- 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

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Pamela R. Crocker
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester NY 14650-2201

MAILED
AUG 02 2010
OFFICE OF PETITIONS

In re Application of	:	
Dale F. McIntyre, et al.	:	
Application No. 10/754,350	:	ON PETITION
Filed: January 9, 2004	:	
Attorney Docket No. 80353A/F-P	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 14, 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 November 23, 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)(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 February 24, 2010. The Notice of Abandonment was mailed June 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 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 (3) a proper statement of unintentional delay; and (4) a terminal disclaimer and fee as required by 37 CFR 1.137(d).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that

such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

This application is being referred to Technology Center AU 3629 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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PHYNEXUS, INC.
3670 CHARTER PARK DRIVE
SAN JOSE CA 95136

MAILED

AUG 26 2011

OFFICE OF PETITIONS

In re Application of	:	
Gierde et al.	:	
Application No. 10/754,352	:	DECISION DISMISSING PETITION
Filed: January 8, 2004	:	UNDER 37 CFR 1.182
Attorney Docket No. P010.210	:	

This is a decision on the PETITION UNDER 37 C.F.R. § 1.182 filed July 28, 2011, requesting entry of an amendment to the specification to insert a reference to an earlier-filed application pursuant to the provisions of 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the petition.

The petition is **DISMISSED** as inappropriate.

For the reasons stated herein, a petition under 37 CFR 1.78(a)(3) is required.

The above-noted abandoned application failed to make a proper specific reference to the prior-filed application; namely, application No. 10/620,155, filed July 14, 2003, prior to abandonment. Petitioner now requests that the abandoned application be amended by adding reference to the earlier-filed application. The petition is accompanied by an "amendment" to add the reference to the prior-filed application in the first line of the specification following the title of the invention.

35 U.S.C. § 120 permits entry of a subsequent amendment to an abandoned application in applications filed prior to November 29, 2000 to include the benefit of an earlier filing date for

purposes other than prosecution. *See* Sampson v. Commissioner of Patents and Trademarks, 195 USPQ 136 (DC DC 1976) and in applications filed on or after November 29, 2000, if a petition under 37 CFR 1.78(a)(2) or (5) is not required to add the reference.

However, in this instance, a petition under 37 CFR 1.78 is required. As stated in the questions and answers (See http://www.uspto.gov/patents/law/aipa/18month/18monthfaq.jsp, last visited August 26, 2011):

> **CX14. Can applicant add a benefit claim of a prior-filed non-provisional application in a later-filed copending application that has been abandoned without filing a petition to revive the later-filed application?** (added 4Feb2005)
>
> Yes, a petition to revive the later-filed application is not required when applicant is adding a benefit claim by filing an amendment (or an application data sheet) to add the specific reference of the prior-filed non-provisional application. A petition under 37 CFR 1.78(a)(3), however, is required if the later-filed application is a utility or plant application filed on or after November 29, 2000. If the later-filed application is a utility or plant application filed before November 29, 2000, a petition under 37 CFR 1.182 is required.

The instant application was filed after November 29, 2000. Moreover, the amendment to add the benefit claim was not filed until June 20, 2007. As this was outside of the period specified in 37 CFR § 1.78(a)(2)(ii)[1], no proper benefit claim was timely filed in this application. (Nor was the claim picked up by the Office). As such, a petition for filing the claim a petition to accept the unintentionally delayed benefit claim is required in this abandoned application.

In view thereof, the request for entry of an amendment to add reference to the above-noted, earlier-filed applications is dismissed. It is further noted that if applicant wishes claims to be deleted such should be specifically requested.

---

[1] If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application.

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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3670 CHARTER PARK DRIVE
SAN JOSE CA 95136

MAILED
OCT 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Gierde et al.	:	
Application No. 10/754,352	:	DECISION ON PETITION
Filed: January 8, 2004	:	UNDER 37 CFR 1.78
Attorney Docket No. P010.210	:	

This is in response to the "RENEWED PETITION PETITION UNDER 37 C.F.R. § 1.78 AMENDMENT" filed October 13, 2011, requesting entry of an amendment to the specification to insert a reference to an earlier-filed application pursuant to the provisions of 35 U.S.C. § 120 for the benefit of priority to application No. 10/620,155. This decision is also responsive to the letter filed September 19, 2011. This decision is made in light of the amendment filed October 19, 2011.

The petition under 37 CFR 1.78(a)(3) is **GRANTED**.

The above-noted abandoned application failed to make a proper specific reference to the prior-filed application; namely, application No. 10/620,155, filed July 14, 2003, prior to abandonment. The application as filed rather included a specific reference to application No. 10/622,155. On July 28, 2011, petitioner made the initial request under 37 CFR 1.182 that the abandoned application be amended by adding reference to the earlier-filed application.

By decision mailed August 26, 2011, the petition was dismissed as inappropriate as the proper means for seeking the relief requested was on petition under 37 CFR 1.178(a)(3). As this application was filed after November 29, 2000 and the claim was not picked up by the Office, a granted petition under 37 CFR 1.78(a)(3) was required to permit entry of a subsequent

amendment to an abandoned[1] application to include the benefit of an earlier filing date for purposes other than prosecution.

Preliminarily, it is noted that the arguments set forth in applicants' letter of September 19, 2011 are not persuasive. Therein, applicants argue that the petition under 37 CFR 1.78(a)(3) is not necessary as the benefit claim was in fact picked up by the Office as listed on the filing receipt and that the publication was scheduled accordingly. This argument is not persuasive because the Office did not in fact pick up the correct claim and schedule publication accordingly. As reflected on the filing receipt and the publication, the Office entered the incorrect priority claim as filed. This claim was to application No. 10/622,155. The correct claim was not presented in any manner on filing of the application, and was not in any manner picked up by the Office. The correct claim to application number 10/620,155 was first presented by amendment filed June 20, 2007. Thus, the petition under 37 CFR 1.78(a)(3) is necessary.

Consideration now turns to the merits of the petition under 37 CFR 1.78(a)(3). A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and must be filed during the pendency of the nonprovisional application. 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.

As previously noted, the instant application was filed after November 29, 2000. The amendment to add the benefit claim was not filed until June 20, 2007, which was outside the period specified in 37 CFR § 1.78(a)(2)(ii).[2] Consistent with Sampson

[1] No petition to revive is required to add a benefit claim of the prior-filed non-provisional application.
[2] If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months

v. Commissioner of Patents and Trademarks, 195 USPQ 136 (DC DC 1976), the petition can be considered to add the benefit claim of the prior-filed non-provisional application to the abandoned application and no petition to revive is required. As such, this petition is appropriate. Furthermore, the petition includes payment of the surcharge. 37 CFR 1.78(a)(3) requires a statement that "the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and the date the claim was filed was unintentional." The statement appearing in the petition varies from the language required by 37 CFR 1.78(a)(3). The statement will be construed as the statement required by 37 CFR 1.78(a)(3). If this is an incorrect reading of the statement appearing in the petition, petitioner must promptly notify the Office.

On renewed petition, a reference to the prior-filed nonprovisional application has been included in an amendment, as required by 37 CFR 1.78(a)(2)(iii).

In view thereof, the request for entry of an amendment to insert a reference to the above-noted, earlier-filed application is granted.

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

This application is being forwarded to Technology Center Art Unit 1797 for entry of the amendment filed October 19, 2011.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application.

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/754,352	01/08/2004	1797	655	P010.210	50	2

CONFIRMATION NO. 7624

CORRECTED FILING RECEIPT

55130
PHYNEXUS, INC.
3670 CHARTER PARK DRIVE
SAN JOSE, CA 95136

OC000000050550095

Date Mailed: 10/24/2011

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)

Douglas T. Gierde, Saratoga, CA;
Christopher T. Hanna, San Francisco, CA;

Power of Attorney:
Christopher Holman--40021
Sue Kalman--54727

Domestic Priority data as claimed by applicant

This application is a CIP of 10/620,155 07/14/2003 PAT 7,482,169
and claims benefit of 60/465,606 04/25/2003
and said 10/620,155 07/14/2003
claims benefit of 60/396,595 07/15/2002 *
(*)Data provided by applicant is not consistent with PTO records.

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/14/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/754,352**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

Method and device for extracting an analyte

Preliminary Class

210

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

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The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 12/14/10

C of C mailroom Date 12/1/10

TO SPE OF : ART UNIT 1644

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/754456 Patent No.: 7645743 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: There was no clerical error on the part of USPTO. Applicants failed to correct the related application data by filing an amendment in response to examiner's office action during the prosecution

RAM R. SHUKLA, PH.D.
SUPERVISORY PATENT EXAMINER

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

January 20, 2011

Stephen C. MacDonald
Johnson & Associates
317A East Liberty Street
Savannah, GA 31401

Patent No: 7,645,743 B2
Application No: 10/754,456
Applicant: Kary B. Mullis, et al.
Issued: January 12, 2010
Title: **CHEMICALLY PROGRAMMABLE IMMUNITY**

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 or 1.323.

The error complained of in your request cannot be corrected since: "per the examiner, there was no clerical error on the part of the Patent and Trademark Office. Applicants failed to correct the related application data by filing an amendment in response to examiner's office action during the prosecution".

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

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

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460 (voice)
(571) 270-9892 (fax)

vt

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PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED
JAN 10 2012
OFFICE OF PETITIONS

In re Patent No. 7,368,056	:	
Issue Date: May 6, 2008	:	
Application No.: 10/754,508	:	NOTICE
Filed: January 12, 2004	:	
Attorney Docket No.: 4124-0119P	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed December 13, 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**. The change of status to a large entity has been entered and made of record.

This file is being forwarded to the Files Repository.

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

Shirene Willis Brantley

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

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399 PARK AVENUE
NEW YORK NY 10022

MAILED
MAY 24 2011
OFFICE OF PETITIONS

In re Patent No. 7,884,189
Tong et al.
Issue Date: February 8, 2011
Application No. 10/754,687
Filed: January 9, 2004
Attorney Docket No. 19240.209-US1
Title: THE CARBOXYLTRANSFERASE DOMAIN OF ACETYL-COA CARBOXYLASE

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition filed on April 7, 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 three hundred sixty-five (1,365) days.

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

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 888 (777 + 111) days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 982 days.

The period of adjustment under 37 CFR 1.702(a) and the period of adjustment under 37 CFR 1.702(b) overlaps for a total of 217 days (111 days November 30, 2008 to March 20, 2009 and 106 days January 10, 2007 to April 25, 2007).

Patentee's delay totals 399 days.

In view thereof, the patent is entitled to an overall adjustment of 1254 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 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) 272-3215.

Charlema Grant
Attorney
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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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)
6974140	2005-12-13	10754957	2004-01-12	

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	/steve webb/	Date (YYYY-MM-DD)	2010-11-26
Name	Steven W. Webb	Registration Number	43246

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. 6974140
Issue Date: December 13,2005
Application No. 10754957
Filed: January 12,2004
Attorney Docket No. 0110/001

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

This is a decision on the electronic petition, filed November 26,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 26,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/15/2011

TO SPE OF : ART UNIT 3624

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/755162 Patent No.: 8015038 B2

CofC mailroom date: 10/31/2011

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: _____

_____

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: _____

Lynda Jasmin
SPE

3624
Art Unit

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8TH FLOOR
NEW YORK NY 10016-0601

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OFFICE OF PETITIONS

In re Application of :
McKay :
Application No. 10/755,494 :
Patent No. 6,981,291 :
Filed: January 12, 2004 :
Issue Date: January 3, 2006 :
Attorney Docket No. RBD-120-A :
Title: MOTORIZED CLEANING :
APPARATUS :

DECISION ON RENEWED PETITION
UNDER 37 C.F.R. §1.28(c)

This is a notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR § 1.28, dated October 4, 2007.

37 C.F.R. §1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

The original petition was submitted on March 22, 2006, where Petitioner submitted the type of fee that was erroneously paid and the total deficiency payment owed.

The original petition was dismissed via the mailing of a decision on July 11, 2006, as the petition failed to identify the small entity fee that was actually paid and when said fee was paid.

With this renewed petition, Petitioner has identified the small entity fee that was actually paid and when said fee was paid.

This notice pertains to 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 C.F.R. § 1.28 is hereby accepted. The renewed petition is **GRANTED** accordingly.

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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SEP 13 2011

Terry Mahn
Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, D.C. 20005

Re: Patent Term Extension
Application for
U.S. Patent No. 7,060,250

WITHDRAWAL OF APPLICATION FOR PATENT TERM EXTENSION

This is in response to the election of U.S. Patent No. 6,676,929 filed August 16, 2011, for patent term extension for U.S. Patent No. 7,060,250 based on the regulatory review of ABLAVAR® (gadofosveset trisodium).

Because U.S. Patent No. 7,060,250 was NOT elected, the application is withdrawn.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755. E-mail inquiries should be directed to mary.till@uspto.gov.

Mary C. Till
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Associate Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

RE: ABLAVAR® (gadofosveset trisodium)
Docket No.:

Attorney Docket No.: 25562-0005004

OFFICIAL COMMUNICATION FACSIMILE:

OFFICIAL FAX NO: (571) 273-7755

Number of pages including this page 2 pages

Applicant	: Thomas J. McMurry et al.	Art Unit	: 1618
Serial No.	: 10/755,506	Examiner	: Michael G. Hartley
Filed	: January 12, 2004	Patent No.	: 7,060,250

Title : Diagnostic Imaging Contrast Agents with Extended Blood Retention

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

An Election of Application for Extension of Patent Term under 35 U.S.C. § 156 and 37 C.F.R. § 1.785(b) dated August 16, 2011, is attached.

Respectfully submitted,

Date: August 16, 2011

/Teresa A. Lavoie/
Teresa A. Lavoie, Ph.D.
Reg. No. 42,782

Fish & Richardson P.C.
3200 RBC Plaza
60 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 335-5070
Fax: (612) 288-9696

60719694.doc

NOTE: This facsimile is intended for the addressee only and may contain privileged or confidential information. If you have received this facsimile in error, please immediately call us collect at (612) 335-5070 to arrange for its return. Thank you.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re:	U.S. Patent No. 7,060,250
Issued:	June 13, 2006
To:	Thomas J. McMurry et al.
For:	Diagnostic Imaging Contrast Agents with Extended Blood Retention

Mail Stop Hatch-Waxman PTE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22314-1450
Facsimile: (571) 273-7755

ELECTION OF APPLICATION FOR EXTENSION OF PATENT TERM
UNDER 35 U.S.C. § 156 AND 37 C.F.R. § 1.785(b)

Sir:

This responds to the Notice of Final Determination and Requirement for Election of August 1, 2011 ("Notice"). The Notice advises that the applicant for patent term extension must elect which of U.S. Patent Nos. 6,676,929 or 7,060,250 it wishes to extend by September 1, 2011. This response is timely filed within the prescribed period.

In accordance with 37 C.F.R. § 1.785(b), **the applicant has elected to extend U.S. Patent No. 6,676,929 and not to extend the above-referenced U.S. Patent No. 7,060,250.** Therefore, the applicant requests that the Director withdraw the application for extension of U.S. Patent No. 7,060,250.

No fee is believed to be due with this filing. However, please apply any required fee to Deposit Account No. 06-1050. Please contact the undersigned counsel with any questions regarding this submission.

Respectfully submitted,

Date: August 15, 2011

/Teresa A. Lavoie/
Teresa A. Lavoie
Reg. No. 42,782

Fish & Richardson P.C.
60 South Sixth Street
3300 RBC Plaza
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

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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.
10/755,521	01/12/2004	Brian N. Munk	174-0062A	1373

7590 08/25/2010

Shawn Hunter
Bracewell & Patterson, L.L.P.
P.O. Box 61389
Houston, TX 77208-1389

EXAMINER
SINGH, SUNIL

ART UNIT	PAPER NUMBER
3673	

MAIL DATE	DELIVERY MODE
08/25/2010	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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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Maryam Imam and LSI Corporation
95 South Market Street
Suite 570
San Jose CA 95113

In re Application of: NEMAZIE et al.	)	
Application No. 10/755,521	)	Petition under 37 CFR 1.324
Attorney Docket No. SILICONSTOR-02US	)	
Filed: February 9, 2004	)	
For: **SWITCHING SERIAL ADVANCED**	)	
TECHNOLOGY ATTACHMENT (SATA) TO	)	
A PARALLEL INTERFACE	)	

In view of the papers and petition filed February 22, 2010, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.324. The inventorship of this application has been changed by adding "Young- Ta Wu" and "Shiang-Jyh Chang" as co-inventors, such that the current inventorship is now Siamack Nemazie, Andrew Hyonil Chong, Young- Ta Wu, and Shiang-Jyh Chang.

The petition has been **Granted**.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

Inquiries to this decision may be directed to undersigned at (571) 272-4210.

/Mano Padmanabhan/

Mano Padmanabhan, WQAS 2180
Technology Center 2100
Computer Architecture, Software, and Information Security

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: 2838-00800	
Application Number: 10/755,570	Filing Date (or 371(b) or (f) Date): January 12, 2004
Patent Number: 7780099	Issue Date: August 24, 2010
First Named Inventor: Mark T. Holtzapple	
Title: HIGH-EFFICIENCY JET EJECTOR AND PROPULSIVE JET	

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 /Timothy S. Westby/	Date September 7, 2010
Name (Print/Typed) Timothy S. Westby	Registration Number 52,352

***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.

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

Mail Date: 09/13/2010

Applicant	: Mark T. Holtzapple	: DECISION ON REQUEST FOR
Patent Number	: 7780099	: RECALCULATION of PATENT
Issue Date	: 08/24/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/755,570	: OF WYETH
Filed	: 01/12/2004	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

Mail Date: 08/06/2010

Applicant	: Thomas Brian Laviolette	: DECISION ON REQUEST FOR
Patent Number	: 7658017	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/755,571	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/12/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1112** 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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Russell W. Pyle
Suite 850
221 N. LaSalle St.
Chicago IL 60601

MAILED
SEP 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Laurie Bowles et al.	:	
Application No. 10/755,612	:	DECISION ON PETITION
Filed: January 12, 2004	:	
Attorney Docket No. RAY 40034	:	

This is a decision on the Petition For Expungement of Assignment Under MPEP 323.01(d), filed August 4, 2011, which is being treated as a petition under 37 CFR 1.182 to expunge an assignment previously recorded against the above-identified application.

The petition is **granted**.

Petitioner indicates that sections of the Contributions and Purchase Agreement are proprietary but were inadvertently provided on an assignment document associated with the above-identified application. Petitioner requests that this original document containing the sensitive proprietary information be expunged. A copy of this assignment document that redacts the proprietary information without disturbing the remainder of the document's contents was recorded at reel 026819 frame 0307 to replace the original document.

While, as noted in MPEP 323, the USPTO will not normally remove a recorded document but instead records supplemental correcting documents, the sensitive nature of the proprietary information in question justifies the requested expungement. Since the normal corrective procedures outlined in MPEP § 323.01(a) through § 323.01(c) will not provide the petitioner with adequate relief and the integrity of the assignment records will not be affected by granting the petition due to the presence of the newly recorded redacted copy, the requested expungement is granted.

The fee for a petitioner filed under 37 CFR 1.182 has been charged to petitioner's deposit account as authorized.

The relief will be effected as follows:

(1) the USPTO will remove any and all reference "pointers" in its relevant systems to the agreement recorded at reel 023409 frame 0414, such that the agreement cannot be located by referencing any of the applications or patents associated with the above-identified application against which the agreement was formerly recorded;

(2) the copy of the assignment document that redacts the proprietary information, recorded at reel 026819 frame 0307, will be recognized as having a date of recordation of October 23, 2009, the date the original document was recorded; and

(3) the petition and decision associated with this expungement will be maintained in confidence separate from any application or patent file to protect the sensitive information, including the reel/frame numbers of the original document.

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

Carl Friedman
Petitions Examiner
Office of Petitions

Cc: Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

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CANTOR COLBURN LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD CT 06103

MAILED
AUG 02 2011
OFFICE OF PETITIONS

In re Patent No. 7,892,357 :
Issue Date: 22 February, 2011 :
Application No. 10/755,617 : ON PETITION
Filed: 12 January, 2004 :
Attorney Docket No. ATI0021US :

This is a decision on the petition filed on 25 May, 2011, pursuant to 37 C.F.R. §1.183 and §3.81(b) to correct, *inter alia*, the location of of the assignee on the front page of the above-identified patent by way of a certificate of correction under 37 C.F.R. §1.323.

The request is **GRANTED**— upon the instant showing of the recordation of the assignment on 21 January, 2004, and the location of recordation as Reel/Frame 014887/0115.

Petitioner requests issuance of a certificate of correction the identification of the Assignee address and correct typographical errors of the substance/form of that submitted therewith.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 C.F.R. §3.81(b) and directing issuance of the requested Certificate of Correction.

Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Patent No. 7,892,357
Application No. 10/755,617

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[1]) 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] 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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LLP
P O BOX 2207
WILMINGTON DE 19899

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AUG 16 2011

OFFICE OF PETITIONS

In re Application of :
Heim, et al. :
Application No. 10/755,677 : ON APPLICATION FOR
Filed: January 13, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 12810-00047-US

This is in response to the application for patent term adjustment under 37 C.F.R. 1.705(b), filed May 23, 2011. Applicants submit that the patent term adjustment to be indicated on the patent is at minimum one thousand six hundred seventy (1670) days, not one thousand one hundred seventy-eight (1178) 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 dispute a period of reduction associated with the filing of a complete response to the May 5, 2004 Notice to File Missing Parts of Nonprovisional Application.

As a preliminary matter, despite contrary assertions in the petition, this application is, and was processed as an application under 35 U.S.C. 111(a). It is noted that applicants filed a petition under 37 CFR 1.78(a)(3) on May 6, 2005, which was granted on March 17, 2006. The petition sought to add a delayed benefit claim which stated the application is a CIP of a PCT, not a 371 of the PCT.

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

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

To the extent that applicants otherwise request correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **DISMISSED**.

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 to date is 1178 days.

Applicants dispute the reduction of 249 days associated with filing a complete reply to the May 5, 2004 Notice to File Missing Parts of Nonprovisional Application.

On May 5, 2004, the Office mailed a Notice to File Missing Parts of Nonprovisional Application that required applicants to submit the basic filing fee, a surcharge for its late filing, and a sequence listing. Applicants were required to provide an initial computer readable form (CRF) copy of the sequence listing, an initial paper or compact disc (CD) copy of the sequence listing, as well as an amendment directing its entry into the application. Applicants also were required to provide a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or CD) sequence listing and, where applicable, includes no new matter. On September 7, 2004 applicants filed a response.

On September 22, 2004, the Office mailed a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, notifying applicants that the sequence listing in CRF is objected to because the contents of the CRF does not comply with the requirements of 37 CFR 1.822 and/or 1.823.

On November 22, 2004, applicants filed a reply to the Notice to Comply in the form of a substitute paper copy of the sequence listing and a substitute CRF of the sequence listing.

On December 7, 2004, the Office mailed a second Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, which appears to be identical in substance to the September 22, 2004 Notice.

On April 11, 2005, applicants filed a replacement paper copy of the sequence list, a diskette of the sequence listing in CRF, and a statement to support its filing and submission. The April 11, 2005 filing completed the September 7, 2004 reply to the May

5, 2004 Notice to File Missing Parts of Nonprovisional Application.

Applicants failed to engage in reasonable efforts to conclude processing of the application by failing to completely reply to the original May 5, 2004 Notice within the three-month period provided for in 37 CFR 1.704(b). Applicants filed a partial response on September 7, 2004. Applicants did not file a complete response until April 11, 2005. It is applicants' responsibility to file complete responses to Office actions/Notices. The subsequently mailed Notices to Comply did not set forth new requirements. They merely pointed out that applicants had failed to file a complete response to the May 5, 2004 Notice.

Accordingly, the period of adjustment was properly reduced by 249 days. Per 37 CFR 1.704(b), the period of adjustment of the term of the patent was reduced by 33 days, counting the number of days in the period beginning on the day after the date that is three months after the mailing date of Notice to File Missing Parts of Nonprovisional Application, August 6, 2004, and ending on the date the partial reply was filed, September 7, 2004. Per 37 CFR 1.704(c)(7), a 216 day period of reduction was entered, counting the number of days beginning on the day after the date the initial reply was filed, September 8, 2004, and ending on the date that a complete response was filed, April 11, 2005.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 1178 (1429 days of Office delay - 251 (249 + 2)days of Applicant delay) days.

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) 272-3230

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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MAR 28 2011

OFFICE OF PETITIONS

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago IL 60610

In re Patent No. 7,515,671	:	DECISION ON REQUEST
Yoko Sonoda	:	FOR
Issue Date: April 7, 2009	:	RECONSIDERATION OF
Application No. 10/755,729	:	PATENT TERM ADJUSTMENT
Filed: January 12, 2004	:	and
Attorney Docket No. 9281-4728	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 28, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred thirty-four (1234) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand two hundred thirty-three (1233)** days.

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

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 January 13, 2007 and ends on September 23, 2008, the day before the first RCE was filed, which considering 138 days

of overlap amounts to 482 (not 483) days for "B" delay. See U.S.C. 154(b)(1)(B)(i).

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 Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred thirty-three (1233) days.**

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,515,671 B2

DATED : **April 7, 2009** **DRAFT**

INVENTOR(S) : Yoko Sonada

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 751 days

Delete the phrase "by 751 days" and insert – by 1233 days--

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DILLON & YUDELL LLP
8911 NORTH CAPITAL OF TEXAS HWY, SUITE 2110
AUSTIN, TX 78759

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of :
Bhargav V. PEREPA, et *al.* :
Application No. 10/755,829 :
Filed: January 12, 2004 :
Attorney Docket No. **AUS920030748US1** :

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 15, 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 request was signed by Andrew J. Dillon on behalf of all attorneys of record. Andrew J. Dillon has been withdrawn as attorney or agent of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

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

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

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In re Patent No. 6963983
Issue Date: November 8,2005
Application No. 10755948
Filed: January 13,2004
Attorney Docket No. 23011.0001

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

This is a decision on the electronic petition, filed November 4,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 4,2011 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6963983	2005-11-08	10755948	2004-01-13	

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	/David H. Judson/	Date (YYYY-MM-DD)	2011-11-04
Name	David H. Judson	Registration Number	30467

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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LAW OFFICE OF DAVID H. JUDSON
15950 DALLAS PARKWAY
SUITE 225
DALLAS TX 75248

MAILED
JAN 30 2012
OFFICE OF PETITIONS

In re Patent No. 6,963,983
Issue Date: November 8, 2005
Application No. 10/755,948
Filed: January 13, 2004
Attorney Docket No. 23011.0001

: LETTER

This letter is the result of a sua sponte review of the November 04, 2011 electronically filed petition under 37 CFR 1.378(c) to accept the delayed payment of a maintenance fee in the above-identified application.

A review of USPTO records reveals that the "Petition To Accept Unintentionally Delayed Payment Of Maintenance Fee In An Expired Patent (37 CFR 1.378(c)" and the accompanying "Electronic Patent Application Fee Transmittal" submission filed November 04, 2011 were erroneously accepted. Petitioner has not submitted a renewed petition under 37 CFR 1.378(c), as required in the petition decision mailed March 23, 2010, along with the required $400.00 reconsideration fee. Therefore, a petition for reconsideration under 37 CFR 1.378(e) along with the required $400.00 reconsideration fee must be filed within **TWO (2) MONTHS** from the mail date of this letter.

If applicant fails to submit the above, the electronically filed, November 04, 2011, petition under 37 CFR 1.378(c) will be **VACATED** and the status will be changed to indicate that the above-identified patent is expired.

The renewed petition cannot be filed using the ePetition format but must instead be filed to the Office of Petitions for consideration.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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

LAW OFFICE OF DAVID H. JUDSON
15950 DALLAS PARKWAY
SUITE 225
DALLAS TX 75248

MAILED
APR 10 2012
OFFICE OF PETITIONS

In re Patent No. 6,963,983 :
Issue Date: January 13, 2004 :
Application No. 10/755,948 :
Filed: January 13, 2004 :
For: METHOD OF AND SYSTEM FOR :
DETECTING AN ANOMALOUS OPERATION :
OF A COMPUTER SYSTEM :

ON PETITION

This is a decision on the "PETITION FOR RECONSIDERATION UNDER 37 CFR 1.378(e)," filed March 27, 2012, and Supplemental to the petition filed November 4, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7242808	2007-07-10	10755956	2004-01-12	

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	/William W. Lewis III/	Date (YYYY-MM-DD)	2011-09-08
Name	William W. Lewis III	Registration Number	48742

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.**

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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.

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In re Patent No. 7242808
Issue Date: July 10,2007
Application No. 10755956
Filed: January 12,2004
Attorney Docket No. 15252.8

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

This is a decision on the electronic petition, filed September 8,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 8,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110801

DATE : August 01, 2011

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction on Patent No.: 7715855

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:

/DWAYNE BOST/
Supervisory Patent Examiner.Art Unit 2617

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.
10/756,189	01/13/2004	Michael A. Berger	812495/010001 (10.0900)	2321

64553 7590 11/09/2010
Nixon Peabody LLP (F5 PATENTS)
Gunnar G. Leinberg
1100 Clinton Square
Rochester, NY 14604

EXAMINER
BAYARD, DJENANE M

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
11/09/2010	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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NIXON PEABODY LLP (F5 PATENTS)
GUNNAR G. LEINBERG
1100 CLINTON SQUARE
ROCHESTER NY 14604

In re Application of:	)	
Michael A. BERGER et. al.	)	
Application No. 10/756,189	)	**DECISION ON PETITION FOR**
Filed: Jan 13, 2004	)	**EXPUNGING INFORMATION UNDER**
Docket No. 812495/010001 (10.0900)	)	**UNDER 37 CFR § 1.59**
Title: METHOD AND APPARATUS FOR	)	
ADAPTIVE SERVICES NETWORKING	)	

This is a decision on the petition under 37 CFR § 1.59(b), filed on Oct 05, 2010, to expunge information from the above identified application.

The petition is **GRANTED**.

Petitioner requests that the information submitted on Sept 8, 2010 and June 2, 2010, be expunged from the record.

Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(g) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

The expunged material has been removed from the official file.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-4147.

If attempts to reach the undersigned by telephone are unsuccessful, Beatriz Prieto, Quality Assurance Specialist, can be reached at (571) 272-3902.

/Kim Huynh/

Kim Huynh,
Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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ALEXANDRIA, VA 22313-1450
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MCCORMICK, PAULDING & HUBER LLP
CITY PLACE II
185 ASYLUM STREET
HARTFORD CT 06103

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application of :
Jarrett : DECISION ON PETITION
Application No. 10/756,520 :
Filed: January 14, 2004 :
For: UMBRELLA WATER CONTROL :

This decision is in response to the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181 and the petition to revive pursuant to 37 CFR 1.137(b), filed August 16, 2010.

This application became abandoned January 14, 2006 for failure to timely submit a proper reply to the Office communication mailed October 13, 2005. The Office communication set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed May 9, 2006. A petition under 37 CFR 1.181 was filed May 16, 2006 and dismissed September 25, 2006. A renewed petition under 37 CFR 1.181 was filed October 10, 2006 and dismissed December 4, 2006. A renewed petition was filed January 12, 2007 and dismissed March 19, 2007. A renewed petition was filed May 15, 2007 and dismissed June 21, 2007. A renewed petition was filed November 11, 2009 and dismissed June 15, 2010.

DECISION UNDER 37 CFR 1.181

As previously indicated, any petition filed pursuant to 37 CFR 1.181 must be filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable. See, 37 CFR 1.181(f).

As the instant petition was filed more than two years after the mail date of the decision on petition mailed June 21, 2007, the instant petition filed pursuant to 37 CFR 1.181 is hereby **DISMISSED AS UNTIMELY**.

DECISION UNDER 37 CFR 1.137(b)

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

In view thereof, the petition under 37 CFR 1.137(b) is hereby **GRANTED**.

This application is being directed to Group Art Unit 3637 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

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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MESMER & DELEAULT, PLLC
41 BROOK STREET
MANCHESTER, NH 03104

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of :
David H. Dicks, et al. :
Application No. 10/756,544 : DECISION ON PETITION
Filed: January 12, 2004 :
Attorney Docket No. nova 0104fitmt :

This is a decision on the renewed petition, filed March 26, 2007, 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 July 20, 2006, which set a which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). Accordingly, a reply was due on or before August 20, 2006.

Petitioner states that a timely reply was mailed via EFS Web along with a certificate of transmission on August 17, 2006, which included the following papers: a reply to the outstanding Office action. The original reply is in the file.

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 July 20, 2006 is hereby **withdrawn** and the **application restored to pending status**.

In view of granting to the petition to withdraw the holding of abandonment, the fee of $400 submitted along with the petition is deemed unnecessary and will be refunded to petitioner's credit card in due course.

Telephone inquiries concerning this decision should be directed to the April M. Wise at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3754 for processing of the amendment previously filed August 17, 2006.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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

MAY 26 2011

OFFICE OF PETITIONS

Louis C. Dujmich
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of the Americas
New York, NY 10036-8403

In re Application of	:	
Ralph F. Kalies	:	Decision Refusing to Accord
Application No. 10/756,608	:	Status Under 37 CFR 1.47(b)
Filed: January 13, 2004	:	
Attorney Docket No. 036806.00442	:	

This is a decision on the petition under 37 CFR 1.47(b) filed January 13, 2004. The Office regrets the delay in the issuance of the instant decision.

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. No further petition fee is required for the request. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the current non-signing inventor. **Failure to respond will result in abandonment of the application.**

Procedural Background

The instant application, Application No. 10/756,010, and Application No. 10/756,043 were filed January 13, 2004. Ralph F. Kalies is named as the sole inventor in all three of the applications, and each set of application papers includes a petition under 37 CFR 1.47(b).

On April 30, 2004, the Office mailed a decision dismissing the petition under 37 CFR 1.47(b) filed in Application No. 10/756,043.

On May 20, 2004, the Office mailed a decision dismissing the petition under 37 CFR 1.47(b) filed in Application No. 10/756,010.

The Office inadvertently failed to issue a decision on the petition filed in the instant application.

Petitioner filed a request for reconsideration and a declaration signed by inventor Kalies in Application No. 10/756,043 on August 4, 2004.

Petitioner filed a request for reconsideration and a declaration signed by inventor Kalies in Application No. 10/756,010 on August 5, 2004.

Petitioner did not file a declaration signed by inventor Kalies in the instant application.

Discussion

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

(1) Proof that the non-signing inventor cannot be found or reached after diligent effort or that the inventor refused to sign the declaration after having been presented with the application papers (specification, claims, and drawings),
(2) An acceptable oath or declaration;
(3) The petition fee;
(4) A statement of the last known address of the non-signing inventor;
(5) Proof of proprietary interest; and
(6) Proof acceptance of the declaration without the inventor's signature is necessary to preserve the rights of the parties or prevent irreparable damage.

The petition lacks items (1), (2), and (6).

The Record Fails to Establish the Inventor Refused to Sign the Declaration within the Meaning of 37 CFR 1.47

Office policy requires a copy of an application be presented to an inventor in order to establish refusal to sign a declaration. *See* MPEP 409.03(d). In other words, a petition must establish the inventor was able to sign the declaration but refused to sign the declaration. An inventor is unable to sign a declaration stating he or she has "reviewed and understands the application papers" when the inventor has not been presented with a copy of the application and therefore has not reviewed the application. In addition, until an inventor reviews the papers and reads the specification and claims, an inventor cannot know if he or she is actually an inventor of the claimed invention. The petition fails to establish the non-signing inventor was presented with a copy of the application papers. Therefore, the petition will not be granted.

Petitioner should send a copy of the application to the inventor along with instructions setting a deadline for the return of a signed declaration. The letter to the inventor should state that, if petitioner receives no reply from the inventor, petitioner will interpret the lack of reply as a refusal to sign the declaration. This sort of ultimatum lends support to a finding of refusal by conduct when a response is not received from an inventor. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as a certified mail return receipt or cover letter of instructions.

The Declaration Filed With the Petition is Unacceptable

Pursuant to MPEP 409.03(b)(A),

> The 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the U.S. Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP § 324.... Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

The declaration filed with the petition does not include the inventor's signature or include the signature of any individual on the Rule 47(b) applicant (Omnicare, Inc.). Therefore, the declaration cannot be accepted.

A declaration signed by a Rule 47(b) applicant *may* take the following form:

(1) A declaration identical to the declaration that would normally be submitted if the inventor were signing the declaration, and
(2) An attachment to the declaration stating,

Supplement to Declaration

I, _____, am [title of individual / a registered patent attorney / a registered patent agent]. I am authorized to sign the declaration on behalf of [Company's name].

I hereby sign the declaration on behalf of [Company's name] and on behalf of the non-signing inventor(s).

I hereby declare I believe each inventor's residence, mailing address, and citizenship stated beside or below the name of each inventor is correct.

I hereby declare that I believe the inventor(s) named in the declaration are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention titled, _____,

which was filed on [(MM/DD/YYYY)] as United States Application No. _____ ["and was amended on _____." (if applicable)].

I hereby state I have reviewed and understand the contents of the application, including the claims, as amended by any amendment specifically referenced above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, and material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

[Signature]
[Typed name of the individual signing the supplement]
[Title if applicable and/or Registration Number if applicable]

The Petition does not Include Proof that the Requested Relief is Necessary to Preserve the Rights of the Parties or to Prevent Irreparable Damage.

37 CFR 1.47(b) states a petition for acceptance of an oath or declaration unexecuted by any inventor must include:

> [A] showing [establishing that allowing the Rule 47(b) applicant to] make application for patent on behalf of and as agent for all the inventors is ... necessary to preserve the rights of the parties or to prevent irreparable damage.

The record fails to establish allowing the Rule 47(b) applicant to make application for patent on behalf of, and as agent for, the inventor is necessary to preserve the rights of the parties or to prevent irreparable damage.

A request for reconsideration can satisfy the requirement above by explicitly stating that that allowing the Rule 47(b) applicant to make application for patent on behalf of and as agent for, the inventor is necessary to preserve the rights of the parties or to prevent irreparable damage.

The Reply to the Instant Petition May Include A Declaration Signed by the Non-Signing Inventor

If Petitioner is able to obtain a declaration signed by the inventor, Petitioner may submit the signed declaration with a request for reconsideration. In other words, if a declaration signed by the inventor is filed with a request for reconsideration, Petitioner will not need to:

1. Establish a copy of the application was sent to the inventor,
2. Include a declaration signed by the Rule 47 applicant, or

3. Prove acceptance of a declaration signed by the Rule 47 applicant on the inventor's behalf is necessary to preserve the rights of the parties or to prevent irreparable damage.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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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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MAILED
SEP 30 2011
OFFICE OF PETITIONS

Louis C. Dujmich
Ostrolenk, Faber, Gerb & Soffen, LLP
1180 Avenue of the Americas
New York, NY 10036-8403

In re Application of	:	
Ralph F. Kalies	:	Decision Noting Joinder of Inventor and
Application No. 10/756,608	:	Decision Dismissing Any Request for
Filed: January 13, 2004	:	Status Under 37 CFR 1.47 as Moot
Attorney Docket No. 036806.00442	:	

A response to a prior decision, which refused to accord status under 37 CFR 1.47(b), was filed September 23, 2011. Papers supplementing the response were filed September 26, 2011. The papers filed September 26, 2011, include a declaration executed by the inventor on September 23, 2011.

In view of the joinder of the inventor, further consideration under Rule 1.47(b) is unnecessary.

Therefore, the petition is **dismissed as moot**.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

10-15-2010

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

Patent No. : 7,313,326 B2
Serial No. : 10/756,626
Inventor(s) : Mauro Cerisola
Issued : December 25, 2007

Re: Request for Certificate of Correction

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

The alleged error on the Title page, item [30] with respect to the omitted priority claim, it is clear that the Manual statement, in accordance with the statutory requirement, requires the filing of a claim of priority in the continuing application. Absent of such a claim, statutory requirement have not been met. Therefore, no correction is in order here under Rules 1.322 and 1.323.

No documents can be found for such Foreign Application Priority Data ·

A certificate of correction will issue to correct the remaining error noted in your request.

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

Further correspondence concerning this matter should be filed and directed to decisions and Certificates of Correction Branch. Any response must be filed within a four week period along with fee of $100.00.

Eva James
For Mary Diggs
Decisions & Certificates
Of Correction Branch
(571-272-3422 or (703) 756-1580

Avago Technologies Limited
4380 Ziegler Road, MS: 76
Fort Collins, CO 80525

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BRAD PEDERSEN
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

MAILED
SEP 20 2010
OFFICE OF PETITIONS

In re Patent No. 7,344,541
Issued: March 18, 2008
Application No. 10/756,817
Filed: January 13, 2004
Attorney Docket No.: 3293.03US10

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is a decision on the "Petition Under 37 C.F.R. § 1.181," filed October 27, 2009, requesting suspension of the time limit for consideration of an application for patent term adjustment ("PTA"). The response is properly treated as a request for reconsideration of petition under 37 CFR 1.183.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See,* MPEP 1002.02.

The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,344,541 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 *Fed. Reg.* 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept <u>any</u> requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-

day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

Applicants request to reconsider the August 27, 2009 decision of the Office of Petitions with respect to U.S. Patent No. 7,344,541, in accordance with the requirements of justice, is granted to the extent that the decision of August 27, 2009 has been reconsidered; however, the renewed petition requesting suspension of the time limit for consideration of an application for patent term adjustment under 37 CFR 1.183 is **DENIED**.

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

Anthony Knight
Director
Office of Petitions

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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BRAD PEDERSEN
PATTERSON THUENTE SKAAR & CHRISTENSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

MAILED
MAY 25 2011
OFFICE OF PETITIONS

In re Patent No. 7,344,541 :
Issue Date: March 18, 2008 :
Application No. 10/756,817 : NOTICE
Filed: January 13, 2004 :
Attorney Docket No. 3293.03US10

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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ROBINSON INTELLECTUAL PROPERTY LAW OFFICE, P.C.
3975 FAIR RIDGE DRIVE
SUITE 20 NORTH
FAIRFAX, VA 22033

MAILED

SEP 08 2010

OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki et al :
Application No. 10/756,833 :
Filed: January 14, 2004 :
Attorney Docket No. 0756-7247

ON PETITION

This is a decision on the petition, filed September 7, 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 August 17, 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 2871 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
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).

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	10756833
Filing Date	14-Jan-2004
First Named Inventor	Shunpei Yamazaki
Art Unit	2871
Examiner Name	LUCY CHIEN
Attorney Docket Number	0756-7247
Title	LIQUID CRYSTAL DISPLAY DEVICE AND MANUFACTURING METHOD OF LIQUID CRYSTAL DISPLAY DEVICE

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	/Eric J. Robinson/
Name	Eric J. Robinson
Registration Number	38285

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 18,2011

In re Application of :

Shunpei Yamazaki

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10756833

Filed : 14-Jan-2004

Attorney Docket No : 0756-7247

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 18,2011 , 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 2871 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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MAILED
SEP 26 2011
OFFICE OF PETITIONS

GIBBONS P.C.
ONE GATEWAY CENTER
NEWARK, NJ 07102

In re Patent of Walele et al.	:	
Patent No. 7,166,739	:	
Issue Date: January 23, 2007	:	Letter
Application No. 10/757,008	:	
Filing Date: January 14, 2004	:	
Attorney Docket No. FINETEX 3.0-047	:	

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed September 8, 2011.

The deficiency payment of $1,365 is hereby accepted.

The change of status to large entity has been entered and made of record.

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

DEC 14 2010

OFFICE OF PETITIONS

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

In re Application of	:	
Kladders et al.	:	
Application No. 10/757047	:	DECISION ON APPLICATION
Filing or 371(c) Date: 01/14/2004	:	FOR PATENT TERM ADJUSTMENT
Attorney Docket Number:	:	
01-1449	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed October 1, 2010. Applicants submit that the correct patent term adjustment is 1278 days, not 1227 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. The basis for Applicants' request is (1) an assertion that the Office erred in calculating an adjustment of 1068 days pursuant to 37 CFR 1.702(a)(1); (2) an assertion that the Office erred in failing to calculate a reduction of 11 days pursuant to 37 CFR 1.704(b), and (3) 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).

The Application for Patent Term Adjustment under 37 CFR 1.705(b), as it relates to the assertion that the Office erred in calculating an adjustment of 1068 days pursuant to 37 CFR 1.702(a)(1), and an assertion that the Office erred in failing to calculate a reduction of 11 days pursuant to 37 CFR 1.704(b), is **GRANTED**.

The Application for Patent Term 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**.

BACKGROUND

The application was filed on January 14, 2004. On July 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 1227 days.

On October 1, 2010, applicants timely submitted the present request for reconsideration of patent term adjustment[1]. Applicants assert that the Office erred in calculating an adjustment of 1068 days pursuant to 37 CFR 1.702(a)(1), in connection with the mailing of a non-final Office action on April 17, 2007. Applicants provide that the application was filed under 35 U.S.C. § 111(a), and the day after the date that is 14 months after the date on which the application was filed is March 15, 2005. The first Office action under 35 U.S.C. 132 was mailed on April 17, 2007, which is 764 days after the date that is 14 months after the date on which the application was filed. As such, Applicants provide that the adjustment pursuant to 37 CFR §§ 1.702(a)(1) and 1.703(a)(1) is 764 days.

Applicants also aver that the Office erred in failing to calculate an adjustment 11 days in connection with the filing of a response to a final Office action mailed October 4, 2007, to which a response was not filed until January 15, 2008, three months and 11 days after the mail date of the final Office action. Pursuant to 37 CFR 1.704(b), Applicants provide that an 11 day reduction is appropriate.

Applicants do not dispute an adjustment of 165 days pursuant to 37 CFR 1.702(a)(4), or a reduction of 6 days pursuant to 37 CFR 1.704(b).

OPINION

Applicants' arguments have been carefully considered. A review of Office records confirm that a first Office action under 35 U.S.C. 132 was mailed on April 17, 2007, 14 months and 764 days after the date on which. the application was filed under 35 U.S.C. § 111(a). The Office agrees that the adjustment pursuant to 37 CFR §§ 1.702(a)(1) and 1.703(a)(1) is 764 days.

Office records also confirm that a final Office action was mailed October 4, 2007, to which a response was filed on January 15, 2008, three months and 11 days after the mail date of the final Office action. Pursuant to 37 CFR 1.704(b), a reduction of 11 days is appropriate.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is nine hundred twelve (912) days, subject to any terminal disclaimer.

With regard to the argument under 37 CFR 1.702(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 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

[1] Office records show that the Issue Fee payment was received in the Office on October 1, 2010.

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 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 Attorney Derek Woods at (571) 272-3232.

Anthony Knight
Director
Office of Petitions

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[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.

Patent Term Adjustments

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

Application Number*: 10757047 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10757047

Application Filing Date	01/14/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	1233
A Delays	1233	PTO Manual Adjustment	-315
B Delays	0	Applicant Delay (APPL)	6
C Delays	0	Total PTA (days)	912

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
106	12/12/2010		P028	Adjustment of PTA Calculation by PTO		315	0
96	07/01/2010		MN/=.	Mail Notice of Allowance			0
95	06/29/2010		N/=.	Notice of Allowance Data Verification Completed			0
94	06/24/2010		IREV	Issue Revision Completed			0
93	06/24/2010		DVER	Document Verification			0
92	06/24/2010		EX.A	Examiner's Amendment Communication			0
91	06/24/2010		CNTA	Notice of Allowability			0
89	05/25/2010		FWDX	Date Forwarded to Examiner			0
90	05/18/2010		C614	New or Additional Drawing Filed			0
88	05/18/2010		A...	Response after Non-Final Action			0
87	05/17/2010		EML_NTR	Email Notification			0
86	05/17/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
85	05/12/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
84	02/18/2010		ELC_RVW	Electronic Review			0
83	02/18/2010		EML_NTF	Email Notification			0
82	02/18/2010		MCTNF	Mail Non-Final Rejection			0
81	02/08/2010		CTNF	Non-Final Rejection			0
80	02/04/2010		FWDX	Date Forwarded to Examiner			0
77	02/04/2010		ABN9	Disposal for a RCE / CPA / R129			0
79	02/02/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
78	02/02/2010	01/27/2010	RCEX	Request for Continued Examination (RCE)		6	72
76	02/02/2010		XT/G	Request for Extension of Time - Granted			0
75	02/02/2010		BRCE	Workflow - Request for RCE - Begin			0
74	10/27/2009		ELC_RVW	Electronic Review			0
73	10/27/2009		EML_NTF	Email Notification			0
72	10/27/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
71	10/25/2009		CTFR	Final Rejection			0
70	09/09/2009		FWDX	Date Forwarded to Examiner			0
69	07/27/2009		A...	Response after Non-Final Action			0
68	05/07/2009		MCTNF	Mail Non-Final Rejection			0
67	05/07/2009		CTNF	Non-Final Rejection			0
65	03/13/2009		FIDC	Finished Initial Data Capture			0
66	02/27/2009		LET.	Miscellaneous Incoming Letter			0
64	02/26/2009		FWDX	Date Forwarded to Examiner			0
63	02/26/2009		W/N=	Withdrawal of Notice of Allowance			0
62	02/06/2009		EIDC	Export to Initial Data Capture			0
61	02/02/2009		MEX.A	Mail Examiner's Amendment			0
60	02/02/2009	08/21/2008	MN/=.	Mail Notice of Allowance	165		45
59	01/30/2009		IREV	Issue Revision Completed			0
58	01/30/2009		DVER	Document Verification			0
57	01/30/2009		N/=.	Notice of Allowance Data Verification Completed			0
56	01/30/2009		DOCK	Case Docketed to Examiner in GAU			0
55	01/28/2009		EX.A	Examiner's Amendment Communication			0
54	01/28/2009		CNTA	Notice of Allowability			0
53	01/28/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
48	01/22/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
47	10/10/2008		DOCK	Case Docketed to Examiner in GAU			0
46	05/14/2008		FWDX	Date Forwarded to Examiner			0
45	04/21/2008		A...	Response after Non-Final Action			0
44	02/22/2008		MCTNF	Mail Non-Final Rejection			0
43	02/19/2008		CTNF	Non-Final Rejection			0
42	01/15/2008		FWDX	Date Forwarded to Examiner			0
41	01/15/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
40	01/15/2008		FWDX	Date Forwarded to Examiner			0
38	01/15/2008		ABN9	Disposal for a RCE / CPA / R129			0
36	01/15/2008		BRCE	Workflow - Request for RCE - Begin			0
35	12/11/2007		MCTAV	Mail Advisory Action (PTOL - 303)			0
34	12/10/2007		CTAV	Advisory Action (PTOL-303)			0
32	11/08/2007		FWDX	Date Forwarded to Examiner			0
33	11/06/2007		C614	New or Additional Drawing Filed			0
31	11/06/2007		AFNE	Amendment after Final Rejection			0
30	10/04/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
29	10/01/2007		CTFR	Final Rejection			0
28	07/19/2007		FWDX	Date Forwarded to Examiner			0
27	07/16/2007		A...	Response after Non-Final Action			0
26	04/17/2007	05/14/2004	MCTNF	Mail Non-Final Rejection	1068		1
25	04/02/2007		CTNF	Non-Final Rejection			0
39	01/15/2007		RCEX	Request for Continued Examination (RCE)			0
37	01/15/2007		XT/G	Request for Extension of Time - Granted			0
21	10/12/2006		DOCK	Case Docketed to Examiner in GAU			0
20	04/19/2006		DOCK	Case Docketed to Examiner in GAU			0
19	02/15/2006		DOCK	Case Docketed to Examiner in GAU			0
15	12/08/2004		DOCK	Case Docketed to Examiner in GAU			0
22	11/17/2004		IDSC	Information Disclosure Statement considered			0
18	11/17/2004		RCAP	Reference capture on IDS			0
17.7	11/17/2004		M844	Information Disclosure Statement (IDS) Filed			0
17	11/17/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
14	10/02/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
11	05/12/2004		WROIPE	Application Return from OIPE			0
10	05/12/2004		ROIPE	Application Return TO OIPE			0
8	05/12/2004		COMP	Application Is Now Complete			0
9	05/11/2004		OIPE	Application Dispatched from OIPE			0
24	04/22/2004		IDSC	Information Disclosure Statement considered			0
13	04/22/2004		RCAP	Reference capture on IDS			0
12.7	04/22/2004		M844	Information Disclosure Statement (IDS) Filed			0
12	04/22/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
7	04/20/2004		ADDFLFEE	Additional Application Filing Fees			0
6	04/20/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
5	04/16/2004		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
4	03/04/2004		L194	Cleared by OIPE CSR			0
3	03/04/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	01/31/2004		SCAN	IFW Scan & PACR Auto Security Review			0
23	01/14/2004		IDSC	Information Disclosure Statement considered			0
16.7	01/14/2004		M844	Information Disclosure Statement (IDS) Filed			0
16	01/14/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
1	01/14/2004		IEXX	Initial Exam Team nn			0

Export to: Excel

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MICHAEL P. MORRIS
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900 RIDGEBURY ROAD
P. O. BOX 368
RIDGEFIELD CT 06877-0368

MAILED
APR 05 2011
OFFICE OF PETITIONS

In re Application of	:	
Kladders et al.	:	DECISION ON REQUEST
Patent Number: 7,878,193	:	FOR RECONSIDERATION OF
Issue Date: 02/01/2011	:	PATENT TERM ADJUSTMENT
Application No. 10/757047	:	and
Filing or 371(c) Date: 01/14/2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: 01-1449	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed March 2, 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 one hundred eighty-five (1185) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred eighty-five (1185) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 15, 2007, and ends on January 14, 2007, the day before the RCE was filed, and is 365 days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1184 days, not 1185 days.

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

The 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 one thousand one hundred eighty-four (1184) 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 : 7,878,193 B2

DATED : **February 1, 2011**

INVENTOR(S) : Kladders 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 912 days.

Delete the phrase "by 912 days" and insert – by 1184 days--

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6952614	2005-10-04	10/757,436	2004-01-15	2127-00

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	/James E. Bame/	Date (YYYY-MM-DD)	2011-02-25
Name	James E. Bame	Registration Number	44521

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. 6952614
Issue Date: October 4,2005
Application No. 10757436
Filed: January 15,2004
Attorney Docket No. P24804

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

This is a decision on the electronic petition, filed February 25,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 25,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

DIMOCK STRATTON LLP
20 QUEEN STREET WEST SUITE 3202, BOX 102
TORONTO ON M5H 3R3
CANADA

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of	:	
Robert Walther and Detlef	:	
Stoetzel	:	DECISION ON SECOND RENEWED
Application No. 10/757,564	:	PETITION UNDER
Filed: January 15, 2004	:	37 C.F.R. § 1.47(A)
Attorney Docket Number: 1406-	:	
23/MBE	:	
Title: METHOD OF MANUFACTURING	:	
A FUEL FILLER TUBE	:	

This is a decision on the second renewed petition pursuant to 37 C.F.R. § 1.47(a), filed on October 15, 2007.

The second renewed petition pursuant to 37 C.F.R. § 1.47(a) is **GRANTED.**

The above-identified application was filed on January 15, 2004, identifying Robert Walther and Detlef Stoetzel as joint inventors. The declaration which was submitted on filing was not executed by either of the two joint inventors. On April 19, 2004, a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" was mailed, indicating that replacement drawings and a fully executed declaration would be required, along with the surcharge associated with the late filing of the same. The notice set a two-month period for response.

On September 20, 2004, a response was received in the Office, which included a partially executed declaration, the surcharge associated with the late filing of the same, an affidavit,

replacement drawings, a petition fee, and a three-month extension of time (it is noted that September 19, 2004 fell on a Sunday).

A notice of incomplete reply was mailed on October 7, 2004, which did not extend the period for reply, and indicated that the declaration was not fully executed. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on September 20, 2004. A notice of abandonment was mailed on March 27, 2006.

A grantable petition pursuant to 37 C.F.R. § 1.47(a) requires:

(1) the petition fee of $200;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application, as set forth in 37 C.F.R. § 1.16(f);
(3) a statement of the last known address of the non-signing inventors;
(4) either
    a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
    b) proof that the non-signing inventor cannot be found or reached after diligent effort, and;
(5) a declaration which complies with 37 C.F.R. § 1.63.

Two petitions were concurrently filed on May 30, 2006, pursuant to 37 C.F.R. §§ 1.47(a) and 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn. The petition pursuant to Rule § 1.181 and granted and the petition pursuant to Rule 1.47(a) was dismissed via the mailing of a decision on September 15, 2006 for failure to meet requirements (4) and (5) of Rule 1.47(a).

A renewed petition pursuant to 37 C.F.R. § 1.47(a) was filed on March 15, 2007, along with a four-month extension of time to make timely the response, and adequate proof that diligent efforts were made to locate the non-signing inventor. The

renewed petition was dismissed via the mailing of a decision on June 14, 2007 which indicated that the fourth requirement of Rule 1.47(a) had been satisfied.

With this second renewed petition, Petitioner has included a two-month extension of time to make timely the response[1] along with a declaration which complies with 37 C.F.R § 1.63 that has been properly executed by inventor Stoetzel. It follows that the fifth requirement of Rule 1.47(a) has been satisfied.

Consequently, each of the five requirements of 37 C.F.R. § 1.47(a) has been met, but for the second requirement, which is not applicable.

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

As provided in Rule 1.47, this Office will forward notice of this application's filing to the non-signing inventor at the address that appears on the declaration that was submitted on August 31, 2010. Notice of the filing of this application will also be published in the Official Gazette.

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing.

Petitioner will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OPAP.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the withdrawal of the holding of abandonment has been acknowledged by OPAP in response to the decision of September 15, 2006 which withdrew the holding of abandonment. It is noted that all inquiries with regard to any failure of that change in status should be directed to OPAP where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

1 It is noted that October 14, 2007 fell on a Sunday.

The general phone number for OPAP is 571-272-4000. Telephone inquiries **regarding this decision** should 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.

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Robert Walther
2210 Lakeshore Road East
Unit #405
Burlington, Ontario
L7R 4J9
CANADA

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of :
Robert Walther and Detlef :
Stoetzel :
Application No. 10/757,564 :
Filed: January 15, 2004 : LETTER
Attorney Docket Number: 1406- :
23/MBE :
Title: METHOD OF :
MANUFACTURING A FUEL FILLER :
TUBE :

Dear Mr. Walther:

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

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

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3225. Requests

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: DIMOCK STRATTON LLP
20 QUEEN STREET WEST SUITE 3202, BOX 102
TORONTO ON M5H 3R3
CANADA

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. 7134967
Issue Date: November 14,2006
Application No. 10757618
Filed: January 13,2004
Attorney Docket No. LES.03.01

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

This is a decision on the electronic petition, filed June 29,2011 ,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 June 29,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7134967	2006-11-14	10757618	2004-01-13	LES 03.01

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	/Michael A. Kerr/	Date (YYYY-MM-DD)	2011-06-28
Name	Michael A. Kerr	Registration Number	42722

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.

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7121169	2006-10-17	10757659	2004-01-14	P2082US

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	/David A. Frey/	Date (YYYY-MM-DD)	2010-10-19
Name	David A. Frey	Registration Number	43618

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.**

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

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

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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
www.uspto.gov

In re Patent No. 7121169
Issue Date: October 17,2006
Application No. 10757659
Filed: January 14,2004
Attorney Docket No. P2082US

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

This is a decision on the electronic petition, filed October 19,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 19,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
DEC 23 2010
OFFICE OF PETITIONS

GREER, BURNS & CRAIN
300 S WACKER DR
25TH FLOOR
CHICAGO IL 60606

In re Application of	:	
Allemann et al.	:	
Application No. 10/757,660	:	ON PETITION
Filed: January 14, 2004	:	
Attorney Docket No. 0212.66402	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 7, 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 (and fee) and an Amendment, (2) the petition fee of $1620.00, and (3) a proper statement of unintentional delay.

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

This matter is being referred to Technology Center AU 3726 for 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

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

OLYMPIC PATENT WORKS PLLC
P.O. BOX 4277
SEATTLE WA 98104

MAILED
FEB 16 2012
OFFICE OF PETITIONS

In re Application of :
Ho et al. :
Application No. 10/757,775 :
Filed: January 14, 2004 :
Attorney Docket No. 42474.03US2 :
For: LIPID-DRUG FORMULATIONS AND METHODS FOR TARGETED DELIVERY OF LIPID-DRUG COMPLEXES TO LYMPHOID TISSUES

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 25, 2012, to revive the above-identified application.

This application became abandoned as a result of applicants' failure to take appropriate action in a timely manner after the decision of August 4, 2011 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 5, 2011. *See* MPEP 1214.06. A Notice of Abandonment was mailed on January 12, 2012.

Applicants have submitted a RCE and required $930.00 fee and amendment, an acceptable statement of the unintentional nature of the delay in responding to the August 4, 2011 Board decision, and the $930.00 petition fee.

Regarding fees, it appears the Office erroneously charged the large entity RCE on December 2, 2011. This application has small entity status. Accordingly, deposit account no. 50-2976 will be refunded $465.00.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioners must notify the Office if this is not a correct reading of the statement appearing in the petition.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 1627 for consideration of the RCE and amendment filed on December 2, 2011.

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

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

VARIAN MEDICAL SYSTEMS, INC.
ATTN: LEGAL DEPARTMENT
3100 HANSEN WAY
M/S E339
PALO ALTO CA 94304

MAILED
OCT 08 2010
OFFICE OF PETITIONS

In re Patent No. 7,133,491	:	
Issued: November 7, 2006	:	
Application No. 10/757,779	:	ON PETITION
Filed: January 15, 2004	:	
Attorney Docket No. 07-044-US	:	

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

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

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

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

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

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

EVANS & MOLINELLI PLLC
P.O. BOX 7027
FAIRFAX STATION VA 22039

MAILED

SEP 02 2011

OFFICE OF PETITIONS

In re Application of	:	
ROSEN, et al	:	
Application No. 10/757,827	:	ON PETITION
Filed: January 15, 2004	:	
Attorney Docket No. P4463US02	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 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 February 15, 2011. 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). An extension of time pursuant to the provisions of 37 CFR 1.136(a) for one (1) month was obtained. Accordingly, the date of abandonment of this application is May 16, 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, 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 AU 1632 for processing of the RCE and 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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SEP 23 2010
OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Patent No. 7,118,241
Issue Date: October 10, 2006
Application No. 10/758,107
Filed: January 16, 2004
Attorney Docket No. 4577-0107P

NOTICE

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

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1939)**. 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.

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; a change of fee address; and a request for customer number 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.

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

cc: Craig A. Fieschko
DEWITT ROSS & STEVENS S.C.
2 E. Mifflin St., Suite 600
Madison, WI 53703-2865

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)
7,131,748	2006-11-07	10/758,143	2004-01-15	0901-0016

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)
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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

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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
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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	/John J. Oskorep/	Date (YYYY-MM-DD)	2011-08-31
Name	John J. Oskorep, Esq.	Registration Number	41234

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 7131748
Issue Date: November 7,2006
Application No. 10758143
Filed: January 15,2004
Attorney Docket No. 0901-0016

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 31,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 31,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LANDMARK INTELLECTUAL PROPERTY LAW, PLLC
P.O. BOX 1266
MIDLOTHIAN, VA 23113

MAILED
DEC 15 2010
OFFICE OF PETITIONS

In re Patent No. 7,311,249	:	
Issue Date: December 25, 2007	:	
Application No. 10/758,429	:	DECISION ON PETITION
Filed: January 16, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 62941.002006	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 6, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed non-provisional applications set forth in the amendment filed with the petition by way of certificate of corrections.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the above-noted, prior-filed applications on page one following the title is not acceptable as drafted because Application No. 10/712,182 does not claim benefit of 10/253,243, and Application No. 10/732,641 does not claim benefit of 10/253,243. Further, petitioner has not provided an amendment with a request to change the first sentence to add the benefit claims. See MPEP 201.11(III).

As authorized the $1,410 petition fee and $100 fee for the certificate of corrections has been charged to petitioner's credit card.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this matter may 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
www.uspto.gov

TEXAS INSTRUMENTS INCORPORATED
PO BOX 655474, M/S 3999
DALLAS TX 75265

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of	:	
STASZEWSKI, et al	:	
Application No. 10/758,863	:	DECISION ON PETITION
Filed: January 16, 2004	:	
Docket No. TI-35773	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 12, 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 11, 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 December 12, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal, (2) the petition fee of $1620; and (3) an adequate statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

The Office acknowledges the submission of the Appeal Brief.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2611 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
www.uspto.gov

Avery Dennison Corporation
Amanda Wittine
8080 Norton Parkway
22-D
Mentor OH 44060

MAILED

SEP 22 2010

OFFICE OF PETITIONS

In re Application of :
Josephy et al. :
Application No. 10/758,985 : DECISION ON PETITION
Filed: January 16, 2004 :
Attorney Docket No. 2543-US-D1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 20, 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 February 19, 2009. 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 May 20, 2010. A Notice of Abandonment was mailed on May 25, 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 fee and $300 publication fee, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

It should be noted that a terminal disclaimer is not required as this is not a design application and the application was not filed prior to June 8, 1995.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Jan-11

ROBERT D. SHEDD, PATENT OPERATIONS
THOMSON LICENSING LLC
P.O. BOX 5312
PRINCETON NJ 08543-5312

MAILED
FEB 01 2011
OFFICE OF PETITIONS

In re Application of	:	
Edouard Ritz	:	DECISION ON PETITION
Application Number: 10/759000	:	
Filing Date: 01/16/2004	:	
Attorney Docket Number:	:	
PF030026	:	

This is a decision on the petition, filed on November 30, 2010, under 37 CFR 1.137(f). [1]

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(f)." This is not a final agency decision.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

[1] 37 CFR 1.137(f) provides for revival of a nonprovisional application which became abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

The petition lacks item (1). The petition fails to provide proper notice of foreign or international filing pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) in that the filing date of the subsequently-filed foreign or international application must be provided. Specifically, the space left for the filing date of the foreign or international application has been left blank. Petitioner must provide the date that the foreign or multinational application was filed with any renewed petition.

Receipt of the petition fee is acknowledged.

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 using the EFS-Web system of the USPTO.

Any inquiries concerning this decision may be directed to the undersigned at 571.272.3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Apr-11

ROBERT D. SHEDD, PATENT OPERATIONS
THOMSON LICENSING LLC
P.O. BOX 5312
PRINCETON NJ 08543-5312

MAILED
APR 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Edouard Ritz	:	
Application Number: 10/759,000	:	DECISION ON PETITION
Filing Date: 01/16/2004	:	
Attorney Docket Number:	:	
PF030026	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on February 10, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on June 16, 2010, for failure to timely file a proper reply to the final Office action mailed on March 15, 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. The petition filed under 37 CFR 1.137(f) on November 30, 2010, was dismissed on February 1, 2011.

On February 10, 2011, a petition under 37 CFR 1.137(b) was filed. On April 1, 2011, a request for continued examination was filed, accompanied by a submission under 37 CFR 1.114.

In view of the RCE and submission filed on April 1, 2011, the petition is granted.

The application is referred to Technology Center 2423 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

MAILED

FEB 15 2011

OFFICE OF PETITIONS

In re Patent No. 7,205,903	:	
Issued: April 17, 2007	:	
Application No. 10/759,167	:	ON PETITION
Filed: January 20, 2004	:	
Attorney Docket No. 051681/315849	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 12, 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 inquires 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
www.uspto.gov

MITEL NETWORKS CORPORATION
7300 WEST BOSTON STREET
CHANDLER, AZ 85226

MAILED
MAY 16 2011
OFFICE OF PETITIONS

In re Application of :
Ramiro Liscano :
Application No. 10/759,249 :
Filed: January 20, 2004 :
Attorney Docket No. 551 (P1149US00) :

ON PETITION

This is a decision on the petition filed April 22, 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 December 30, 2010, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 31, 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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Ward & Olivo
382 Springfield Ave.
Suite 300
Summit NJ 07901

JAN 26 2011

In re Application of		
CHEN, SHUXIAN et al.	:	
Application No.: 10/759,400	:	DECISION ON
Filing or 371(c) Date: January 16, 2004	:	PETITION
Attorney Docket Number: 060889-0104-US	:	

This is a decision on the Petition to Withdraw Holding of Abandonment received in the United States Patent and Trademark Office (USPTO) on April 21, 2006.

This petition is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue Fee and Publication fee as required by the Notice of Allowance, mailed October 31, 2005 which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on March 31, 2006.

Petitioner submitted a copy of the original submission which included a properly completed Certificate of Mailing/Transmission. As authorized, the issue fee in the amount of $1,400 charged to Deposit Account.

(1) the United States Patent and Trademark Office was promptly informed of the previous timely mailing,

(2) Copy of "Express Mail" mailing label No. EV 797296415 US with a "Date in" of January 31, 2006.

In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
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

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AUG 23 2010

OFFICE OF PETITIONS

ACADIA PHARMACEUTICALS INC.
3911 Sorrento Valley Blvd.
San Diego CA 92121

In re Patent No. 7,601,740
Weiner, et al.
Issue Date: October 13, 2009
Application No. 10/759,561
Filed: January 15, 2004
Atty Docket No. **12560-016-999**

: 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 April 29, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and forty-nine (1,249) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and forty-nine (1,249) days is **GRANTED**.[1]

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, two hundred and forty-nine (1,249) days.**

[1] It is noted that the "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, added 404 days of additional patent term adjustment. A review of the file history reveals that the April 21, 2010, decision was issued in response to a "Request for Recalculation of Patent Term Adjustment in View of Wyeth" filed March 18, 2010. The 404 days of patent term adjustment is being removed as it was entered in error as a result of duplicitous efforts by the Office to address the request filed March 18, 2010, and the petition under 37 CFR 1.705(d) filed October 14, 2009.

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

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,601,740 B2

DATED : Oct. 13, 2009

INVENTOR(S) : Weiner et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1216) days

Delete the phrase "by 1216 days" and insert – by 1,249 days--

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

COOPER & DUNHAM, LLP
30 ROCEEFELLER PLAZA
20TH FLOOR
NEW YORK, NY 10112

MAILED
DEC 10 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael Wayne Graham, et al.	:	
Application No. 10/759,841	:	DECISION GRANTING PETITION
Filed: January 15, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 0687/74768-AA/JPW/GJG/JRM	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 9, 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 21, 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 1635 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.

/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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COOPER & DUNHAM, LLP
30 ROCKEFELLER PLAZA
20TH FLOOR
NEW YORK NY 10112

MAILED
DEC 30 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael Wayne GRAHAM, et al	:	
Application No. 10/759,841	:	NOTICE
Filed: January 15, 2004	:	
Attorney Docket No. 0687/7468-AA/JPW/GJG/JRM	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

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
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

SEP 16 2010

OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Kubler et al.	:	REQUEST FOR
Patent Number: 7,633,934	:	RECONSIDERATION OF
Issue Date: 12/15/2009	:	PATENT TERM ADJUSTMENT
Application No. 10/760057	:	and
Filing or 371(c) Date: 01/16/2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: 14364US04	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 27, 2010, which is being treated as a petition under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-eight (1278) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-eight (1278) days is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 17, 2004, and ends on October 7, 2008, the day before the RCE was filed, and is 630 days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment for the "B" delay period is 630 days, not 631 days.

Regarding the period of adjustment of 18 days in connection with the filing of a Miscellaneous Communication on June 29, 2009, after the mailing of a Notice of Allowance, pursuant to 37 CFR 1.704(c)(10), a review of the application history confirms that the Miscellaneous Communication was not filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The reduction of 18 days is in error and has been removed.

Regarding the period of adjustment of 8 days in connection with the filing of an Amendment after Notice of Allowance, filed on June 29, 2009, a review of the record reveals that the Office assessed a reduction of 8 days in accordance with 37 CFR 1.704(c)(10) in connection with the

Amendment under 37 CFR 1.312, filed June 29, 2009. The reduction commenced on June 29, 2009, the date that Amendment was filed, and ended July 6, 2009, the mailing date of the Office action in response to the Amendment, and is 8 days (not 7 days).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The 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 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 **one thousand two hundred seventy-six (1276) 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 : 7,633,934 B2

DATED : **December 15, 2009**

INVENTOR(S) : Kubler 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 1258 days.

Delete the phrase "by 1258 days" and insert – by 1276 days--

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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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED
NOV 18 2010
OFFICE OF PETITIONS

In re Application of	:	
Kubler et al.	:	
Patent Number: 7,633,934	:	
Issue Date: 12/15/2009	:	DECISION ON REQUEST
Application No. 10/760057	:	FOR RECONSIDERATION OF
Filing or 371(c) Date: 01/16/2004	:	PATENT TERM ADJUSTMENT
Attorney Docket Number: 14364US04	:	

This is a decision on the petition filed on October 18, 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 one thousand two hundred seventy-seven (1277) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-seven (1277) days is **DISMISSED**.

Applicants request an additional day of patent term adjustment pursuant to 37 CFR 1.703(b), 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), February 11, 2010, and ending on the date the request for continued examination ("RCE") was filed.

Applicants arguments have been carefully considered. 35 U.S.C. 154(b)(1)(B), GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, states:

> 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)

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 January 17, 2004, and ends on October 7, 2008, the day before the RCE was filed, and is 630 days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment for the "B" delay period is 630 days, not 631 days, and the patent term adjustment is 1276 days, not 1277 days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods/
Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/27/10

TO SPE OF : ART UNIT 3775

SUBJECT : Request for Certificate of Correction for Appl. No.: 10760075 Patent No.: 7763048

CofC mailroom date: 12/16/10

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

You can fax the Director/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.

- ☒ **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

/Nicholas Woodall/ 01/03/11

/Thomas C Barrett/ Digitally signed by /Thomas C Barrett/
DN: cn=/Thomas C Barrett/, c=US, ou=SPE AU 3775
Date: 2011.01.30 19:02:48 -05'00'

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
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,091	01/16/2004	Thomas L. Cantor	532212000624	2110

25225 7590 12/14/2010
MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

EXAMINER
CHEU, CHANGHWA J

ART UNIT	PAPER NUMBER
1641	

NOTIFICATION DATE	DELIVERY MODE
12/14/2010	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):

EOfficeSD@mofo.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 1 3 2010

MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO CA 92130-2040

In re Application of:
Cantor et al.
Serial No.: 10/760,091
Filed: January 16, 2006
Attorney Docket No.: **532212000624**

: PETITION DECISION

This is in response to the renewed petition under 37 CFR § 1.59(b), filed December 8, 2010, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the proprietary material submitted to the Patent Office on December 14, 2007; April 24, 2009; November 19, 2009; and June 22, 2010 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(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 this document has been closed and as such the document is 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

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

LAWRENCE I. WECHSLER
ONE WOOLEYS LANE
GREAT NECK, NY 11023

MAILED

NOV 24 2010

OFFICE OF PETITIONS

In re Application of
Lawrence I. Wechsler
Application No. 10/760,147
Filed: January 16, 2004
Attorney Docket No. W1000-24

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 6, 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, December 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 on March 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 $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 3644 for appropriate action by the Examiner in the normal course of business on the reply received October 6, 2010.

April M. Wise
Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7009596	2006-03-07	10760298	2004-01-21	247753USMF

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	/Bradley D. Lytle/	Date (YYYY-MM-DD)	2011-01-10
Name	Bradley D. Lytle	Registration Number	40073

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. 7009596
Issue Date: March 7,2006
Application No. 10760298
Filed: January 21,2004
Attorney Docket No. 247753US8

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 10,2011 ,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 January 10,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
10/760,322	01/16/2004	Joseph J. Kubler	14364US10	2925

23446 7590 10/20/2011
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER
EDOUARD, PATRICK NESTOR

ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
10/20/2011	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):

mhmpto@mcandrews-ip.com

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAIL

OCT 19 2011
DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Application of:
KUBLER, JOSEPH J. et al
Application Serial No.: 10/760,322
Filed: January 16, 2004
For: **HIERARCHICAL DATA COLLECTION NETWORK SUPPORTING PACKETIZED VOICE COMMUNICATIONS AMONG WIRELESS TERMINALS AND TELEPHONES**

DECISION
ON PETITION

This is a decision on the petition requesting withdrawal of the final action, filed February 09, 2011, pursuant to 37 CFR § 1.181.

Petitioner alleges that the examiner erred in holding the Office action mailed January 04, 2011 final and requests withdrawal of finality of the Office action.

PERTINENT BACKGROUND INFORMATION

A non-final Office action was mailed on April 26, 2010 rejecting claims 22-39, 41-68, and 70-85. Claims 1-21, 40, and 69 were withdrawn from consideration.

Applicant filed an amendment and request for reconsideration on August 06, 2010 wherein claims 22, 45, 54, 81, 83, and 85 were amended. Claims 1-21, 40, 69, 80, 82, and 84 were cancelled. Claims 86-88 were added.

On January 04, 2011, the Examiner issued a Final Office action rejecting claims 22-39, 41-68, 70-79, 81, 83, and 85-88.

On February 09, 2011 petition requesting withdrawal of final action was filed.

On May 04, 2011, a RCE was filed and processed.

DECISION

The issue of whether or not the examiner properly made final the office action on January 04, 2011 became moot with applicant's filing of an RCE on May 04, 2011. Accordingly, the RCE filed May 04, 2011 has been processed.

For the reasons set forth above, the petition to withdraw finality is **DISMISSED AS MOOT**.

The application will be forwarded to the examiner for appropriate action responsive to the RCE filed September 1, 2009.

Any inquiry regarding this decision should be directed to Michael Horabik, Quality Assurance Specialist, at (571) 272-3068.

Wanda L. Walker

Wanda L. Walker
Director
Technology Center 2600
Communications